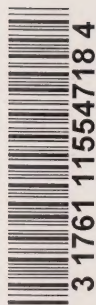


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Legislative Proposals and Explanatory Notes to Implement Remaining Budget 2006 Income Tax Measures

Published by
The Honourable James M. Flaherty, P.C., M.P.
Minister of Finance

August 2006

Canada



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Department of Finance
Canada

Ministère des Finances
Canada



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Legislative Proposals

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Short title

1. This Act may be cited as the *Budget Implementation Act, 2006, No. 2*.

2. (1) **Clause (B) of the description of B in subparagraph 8(1)(r)(ii) of the *Income Tax Act* is replaced by the following:**

(B) the greater of

(I) the amount that is the total of \$500 and the amount determined for the taxation year for B in subsection 118(10); and

(II) 5% of the total of

1. the total of all amounts, each of which is the taxpayer's income from employment for the taxation year as an eligible apprentice mechanic, computed without reference to this paragraph, and

2. the amount, if any, by which the amount required by paragraph 56(1)(m) to be included in computing the taxpayer's income for the taxation year exceeds the amount required by paragraph 60(p) to be deducted in computing that income, and

(2) **Subsection 8(1) of the Act is amended by adding the following after paragraph (r):**

(s) if the taxpayer is employed as a tradesperson at any time in the taxation year, the lesser of \$500 and the amount determined by the formula

$$A - \$1,000$$

where

A is the lesser of

(i) the total of all amounts each of which is the cost of an eligible tool acquired by the taxpayer in the year; and

(ii) the total of

(A) the amount that would, if this subsection were read without reference to this paragraph, be the taxpayer's income for the taxation year from employment as a tradesperson in the taxation year, and

(B) the amount, if any, by which the amount required by paragraph 56(1)(m) to be included in computing the taxpayer's income for the taxation year exceeds the amount required by paragraph 60(p) to be deducted in computing that income.

(3) **Subparagraph 8(6)(a)(i) of the Act is replaced by the following:**

(i) is registered in a program established in accordance with the laws of Canada or of a province that leads to designation under those laws as a mechanic licensed to repair self-propelled motorized vehicles, and

(4) **Paragraph 8(6)(b) of the Act is amended by striking out the word "and" at the end of subparagraph (ii) and by adding the following after subparagraph (iii):**

Deduction —
tradesperson's
tools

(iv) is, unless the device or equipment can be used only for the purpose of measuring, locating or calculating, not an electronic communication device or electronic data processing equipment; and

(5) Subsection 8(7) of the Act is replaced by the following:

Eligible tool of tradesperson

(6.1) For the purposes of paragraph (1)(s) and subsection (7.1), an eligible tool of a taxpayer is a tool (including ancillary equipment) that

(a) is acquired by the taxpayer on or after May 2, 2006 for use in connection with the taxpayer's employment as a tradesperson;

(b) has not been used for any purpose before it is acquired by the taxpayer;

(c) is certified in prescribed form by the taxpayer's employer to be required to be provided by the taxpayer as a condition of, and for use in, the taxpayer's employment as a tradesperson; and

(d) is, unless the device or equipment can be used only for the purpose of measuring, locating or calculating, not an electronic communication device or electronic data processing equipment.

Cost of tool

(7) Except for the purposes of the description of A in subparagraph (1)(r)(ii) and the description of A in paragraph (1)(s), the cost to a taxpayer of an eligible tool the cost of which was included in determining the value of one or both of those descriptions in respect of the taxpayer for a taxation year is the amount determined by the formula

$$K - (K \times L/M)$$

where

K is the cost to the taxpayer of the tool determined without reference to this subsection;

L is

(a) if the tool is a tool to which only paragraph (1)(r) applies in the taxation year, the amount that would be determined under subparagraph (1)(r)(ii) in respect of the taxpayer for the taxation year if the value of C in that subparagraph were nil,

(b) if the tool is a tool to which only paragraph (1)(s) applies in the taxation year, the amount determined under paragraph (s) to be deductible by the taxpayer in the taxation year, or

(c) if the tool is a tool to which both paragraphs (1)(r) and (s) apply in the taxation year, the amount that is the total of

(i) the amount that would be determined under subparagraph (1)(r)(ii) in respect of the taxpayer for the taxation year if the value of C in that subparagraph were nil, and

(ii) the amount determined under paragraph (s) to be deductible by the taxpayer in the taxation year; and

M is the amount that is

(a) if the tool is a tool to which only paragraph (1)(r) applies in the taxation year, the value of A determined under subparagraph (1)(r)(ii) in respect of the taxpayer for the taxation year,

(b) if the tool is a tool to which only paragraph (1)(s) applies in the taxation year, the amount determined under subparagraph (i) of the description A in paragraph (1)(s) in respect of the taxpayer for the taxation year, and

(c) if the tool is a tool to which both paragraphs (1)(r) and (s) apply in the taxation year, the amount that is the greater of the value of A determined under subparagraph (1)(r)(ii) in respect of the taxpayer for the taxation year and the amount determined under subparagraph (i) of the description A in paragraph (1)(s) in respect of the taxpayer for the taxation year.

(6) Subsection (1) applies to the 2007 and subsequent taxation years.

(7) Subsections (2) and (5) apply to the 2006 and subsequent taxation years.

(8) Subsections (3) and (4) apply to property acquired on or after May 2, 2006.

3. (1) The portion of subsection 14(1.01) of the Act before paragraph (c) is replaced by the following:

(1.01) A taxpayer may, in the taxpayer's return of income for a taxation year, or with an election under subsection 83(2) filed on or before the taxpayer's filing-due date for the taxation year, elect that the following rules apply to a disposition made at any time in the year of an eligible capital property in respect of a business, if the taxpayer's actual proceeds of the disposition exceed the taxpayer's eligible capital expenditure in respect of the acquisition of the property, that eligible capital expenditure can be determined and, for taxpayers who are individuals, the taxpayer's exempt gains balance in respect of the business for the taxation year is nil:

(a) for the purpose of subsection (5) other than the description of A in the definition "cumulative eligible capital", the proceeds of disposition of the property are deemed to be equal to the amount of that eligible capital expenditure;

(b) the taxpayer is deemed to have disposed at that time of a capital property that had, immediately before that time, an adjusted cost base to the taxpayer equal to the amount of that eligible capital expenditure, for proceeds of disposition equal to the actual proceeds; and

(2) Paragraph 14(1.01)(c) of the Act is replaced by the following:

(c) if the eligible capital property is

(i) a qualified farm property (within the meaning assigned by subsection 110.6(1)) of the taxpayer at that time, the capital property deemed by paragraph (b) to have been disposed of by the taxpayer is deemed to be a qualified farm property of the taxpayer at that time, and

(ii) a qualified fishing property (within the meaning assigned by subsection 110.6(1)) of the taxpayer at that time, the capital property deemed by paragraph (b) to have been

Election
re capital gain

disposed of by the taxpayer is deemed to be a qualified fishing property of the taxpayer at that time.

(3) Section 14 of the Act is amended by adding the following after subsection (1.01):

Election
re property
acquired with
pre-1972
outlays or
expenditures

(1.02) If at any time in a taxation year a taxpayer has disposed of an eligible capital property in respect of which an outlay or expenditure to acquire the property was made before 1972 (which outlay or expenditure would have been an eligible capital expenditure if it had been made or incurred as a result of a transaction that occurred after 1971), the taxpayer's actual proceeds of the disposition exceed the total of those outlays or expenditures, that total can be determined, subsection 21(1) of the *Income Tax Application Rules* applies in respect of the disposition and, for taxpayers who are individuals, the taxpayer's exempt gains balance in respect of the business for the taxation year is nil, the taxpayer may, in the taxpayer's return of income for the taxation year, or with an election under subsection 83(2) filed on or before the taxpayer's filing-due date for the taxation year, elect that the following rules apply:

- (a) for the purpose of subsection (5) other than the description of A in the definition "cumulative eligible capital", the proceeds of disposition of the property are deemed to be nil;
- (b) the taxpayer is deemed to have disposed at that time of a capital property that had, immediately before that time, an adjusted cost base to the taxpayer equal to nil, for proceeds of disposition equal to the amount determined, in respect of the disposition, under subsection 21(1) of the *Income Tax Application Rules*; and
- (c) if the eligible capital property is at that time a qualified farm property (within the meaning assigned by subsection 110.6(1)) of the taxpayer, the capital property deemed by paragraph (b) to have been disposed of by the taxpayer is deemed to have been at that time a qualified farm property of the taxpayer.

Non-application
of ss. (1.01)
and (1.02)

(1.03) Subsections (1.01) and (1.02) do not apply to a disposition by a taxpayer of a property

- (a) that is goodwill; or
- (b) that was acquired by the taxpayer
 - (i) in circumstances where an election was made under subsection 85(1) or (2) and the amount agreed on in that election in respect of the property was less than the fair market value of the property at the time it was so acquired, and
 - (ii) from a person or partnership with whom the taxpayer did not deal at arm's length and for whom the eligible capital expenditure in respect of the acquisition of the property cannot be determined.

(4) Paragraph 14(1.02)(c) of the Act is replaced by the following:

- (c) if the eligible capital property is
 - (i) a qualified farm property (within the meaning assigned by subsection 110.6(1)) of the taxpayer at that time, the capital property deemed by paragraph (b) to have been

disposed of by the taxpayer is deemed to be a qualified farm property of the taxpayer at that time, and

(ii) a qualified fishing property (within the meaning assigned by subsection 110.6(1)) of the taxpayer at that time, the capital property deemed by paragraph (b) to have been disposed of by the taxpayer is deemed to be a qualified fishing property of the taxpayer at that time.

(5) Section 14 of the Act is amended by adding the following after subsection (1.1):

(1.2) For the purposes of section 110.6 and paragraph 3(b) as it applies for the purposes of that section, an amount included under paragraph (1)(b) in computing a taxpayer's income for a particular taxation year from a fishing business is deemed to be a taxable capital gain of the taxpayer for the year from the disposition in the year of qualified fishing property to the extent of the lesser of

(a) the amount included under paragraph 1(b) in computing the taxpayer's income for the particular year from the fishing business, and

(b) the amount determined by the formula

$$A - B$$

where

A is the amount by which

(i) $\frac{1}{2}$ of the total of all amounts each of which is the taxpayer's proceeds from a disposition on or after May 2, 2006 and in the particular taxation year or a preceding taxation year of eligible capital property (referred to in this subsection as a "disposed property") that was at the time of the disposition a qualified fishing property (within the meaning assigned by subsection 110.6(1)) of the taxpayer exceeds the total of

(ii) $\frac{1}{2}$ of the total of all amounts each of which is

(A) an eligible capital expenditure of the taxpayer in respect of the fishing business that was made or incurred in respect of a disposed property, or

(B) an outlay or expense of the taxpayer that was not deductible in computing the taxpayer's income and that was made or incurred for the purpose of making a disposition of a disposed property, and

B is the total of all amounts each of which is an amount deemed by this section to be a taxable capital gain of the taxpayer for a taxation year preceding the particular year from the disposition of qualified fishing property of the taxpayer.

(6) Paragraphs (a) to (b) of the description of E in the definition "cumulative eligible capital" in subsection 14(5) of the Act are replaced by following:

(a) an amount that the taxpayer has or may become entitled to receive, after the taxpayer's adjustment time and before that time, on account of capital in respect of the business carried on or formerly carried on by the taxpayer, other than an amount that

Deemed
capital gain

- (i) is included in computing the taxpayer's income, or deducted in computing, for the purposes of this Act, any balance of undeducted outlays, expenses or other amounts for the year or a preceding taxation year,
- (ii) reduces the cost or capital cost of a property or the amount of an outlay or expense, or
- (iii) is included in computing any gain or loss of the taxpayer from a disposition of a capital property

exceeds

- (b) all outlays and expenses that were not otherwise deductible in computing the taxpayer's income and were made or incurred by the taxpayer for the purpose of obtaining the amount described by paragraph (a), and

(7) Subsection (1) applies to dispositions of eligible capital property that occur in taxation years that end after February 27, 2000, except that, in its application to those dispositions of eligible capital property that occur before December 21, 2002, the portion of subsection 14(1.01) of the Act before paragraph (c), as enacted by subsection (1), is to be read as follows:

(1.01) A taxpayer may, in the taxpayer's return of income for a taxation year, elect that the following rules apply to a disposition made at any time in the taxation year of an eligible capital property (other than goodwill) in respect of a business, if the taxpayer's actual proceeds of the disposition exceed the taxpayer's cost of the property, that cost can be determined and, for taxpayers who are individuals, the taxpayer's exempt gains balance in respect of the business for the taxation year is nil:

- (a) for the purposes of subsection (5), the proceeds of disposition of the property are deemed to be equal to that cost;

- (b) the taxpayer is deemed to have disposed at that time of a capital property that had, immediately before that time, an adjusted cost base to the taxpayer equal to that cost, for proceeds of disposition equal to the actual proceeds; and

(8) Subsections (2), (4) and (5) apply to dispositions of properties on or after May 2, 2006.

(9) Subsection (3) applies to dispositions of eligible capital property that occur after December 20, 2002, except that, in applying subsection 14(1.03) of the Act, as enacted by subsection (3), to dispositions that occur on or before February 27, 2004, subsection 14(1.03) is to be read without reference to its paragraph (b).

(10) Subsection (6) applies to amounts that become receivable on or after May 2, 2006, except that it does not apply to an amount that became receivable by a taxpayer before Announcement Date if the taxpayer so elects by filing with the Minister of National Revenue an election in writing on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes Announcement Date.

4. (1) Subsection 40(1.1) of the Act is replaced by the following:

Reserve —
property
disposed of
to a child

(1.1) In computing the amount that a taxpayer may claim under subparagraph (1)(a)(iii) in computing the taxpayer's gain from the disposition of a property, that subparagraph shall be read as if the references therein to "1/5" and "4" were references to "1/10" and "9" respectively, if,

- (a) the property was disposed of by the taxpayer to the taxpayer's child,
- (b) that child was resident in Canada immediately before the disposition, and
- (c) the property was immediately before the disposition,
 - (i) any land in Canada or depreciable property in Canada of a prescribed class that was used by the taxpayer, the spouse or common-law partner of the taxpayer, a child or a parent of the taxpayer in a farming or fishing business carried on in Canada,
 - (ii) a share of the capital stock of a family farm corporation of the taxpayer or an interest in a family farm partnership of the taxpayer (such a share or an interest having the meaning assigned by subsection 70(10)),
 - (iii) a qualified small business corporation share of the taxpayer (within the meaning assigned by subsection 110.6(1)), or
 - (iv) a share of the capital stock of a family fishing corporation of the taxpayer or an interest in a family fishing partnership (such a share or an interest having the meaning assigned by subsection 70(10)).

(2) Subsection (1) applies to dispositions of property that occur on or after May 2, 2006.

5. (1) Subsection 44(1.1) of the Act is replaced by the following:

Reserve —
property
disposed of to
a child

(1.1) In computing the amount that a taxpayer may claim under subparagraph (1)(e)(iii) in computing the taxpayer's gain from the disposition of a former property of the taxpayer, that subparagraph shall be read as if the references in that subparagraph to "1/5" and "4" were references to "1/10" and "9" respectively if that former property is real or immovable property in respect of the disposition of which, because of subsection 73(3), the rules in subsection 73(3.1) applied to the taxpayer and a child of the taxpayer.

(2) Subsection (1) applies to dispositions of property that occur on or after May 2, 2006.

6. (1) Paragraph 56(1)(k) of the Act is replaced by the following:

Certain tools
of an
employee,
re proceeds

(k) all amounts received in the year by a person or partnership (in this paragraph referred to as the "vendor") as consideration for the disposition by the vendor of a property the cost of which was included in computing an amount under paragraph 8(1)(r) or (s) in respect of the vendor or in respect of a person with whom the vendor does not deal at arm's length, to the extent that the total of those amounts received in respect of the disposition in the year and in preceding taxation years exceeds the total of the cost to the vendor of the property immediately before the disposition and all amounts included in respect of the disposition under this paragraph in computing the vendor's income for a

preceding taxation year, unless the property was acquired by the vendor in circumstances to which subsection 85(5.1) or subsection 97(5) applied;

(2) Subsection 56(1) of the Act is amended by adding the following after paragraph (1.1):

Apprentice-
ship incentive
grant

(m) amounts received by the taxpayer in the year under the Apprenticeship Incentive Grant program administered by the Department of Human Resources and Social Development;

(3) Subsection 56(3) of the Act is replaced by the following:

Exemption for
scholarships,
fellowships,
bursaries and
prizes

(3) For the purpose of subparagraph (1)(n)(ii), a taxpayer's scholarship exemption for a taxation year is the total of

(a) the total of all amounts each of which is the amount included under subparagraph (1)(n)(i) in computing the taxpayer's income for the taxation year in respect of a scholarship, fellowship or bursary received in connection with the taxpayer's enrolment in an educational program in respect of which an amount may be deducted under subsection 118.6(2) in computing the taxpayer's tax payable under this Part for the taxation year,

(b) the total of all amounts each of which is the lesser of

(i) the amount included under subparagraph (1)(n)(i) in computing the taxpayer's income for the taxation year in respect of a scholarship, fellowship, bursary or prize that is to be used by the taxpayer in the production of a literary, dramatic, musical or artistic work, and

(ii) the total of all amounts each of which is an expense incurred by the taxpayer in the taxation year for the purpose of fulfilling the conditions under which the amount described in subparagraph (i) was received, other than

(A) personal or living expenses of the taxpayer (except expenses in respect of travel, meals and lodging incurred by the taxpayer in the course of fulfilling those conditions and while absent from the taxpayer's usual place of residence for the period to which the scholarship, fellowship, bursary or prize, as the case may be, relates),

(B) expenses for which the taxpayer is entitled to be reimbursed, and

(C) expenses that are otherwise deductible in computing the taxpayer's income, and

(c) the lesser of \$500 and the amount by which the total described in subparagraph (1)(n)(i) for the taxation year exceeds the total of the amounts determined under paragraphs (a) and (b).

(4) Subsection 56(8) of the Act is replaced by the following:

CPP QPP and
UCCB
amounts for
previous years

(8) Notwithstanding subsections (1) and (6), if

(a) one or more amounts received by an individual (other than a trust) in a taxation year as, on account of, in lieu of payment of or in satisfaction of, any benefit under the *Universal Child Care Benefit Act*, the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of the *Canada Pension Plan*, and

(b) a portion, not less than \$300, of the total of those amounts relates to one or more preceding taxation years,

that portion shall, at the option of the individual, not be included in the individual's income.

(5) Subsections (1), (3) and (4) apply to the 2006 and subsequent taxation years.

(6) Subsection (2) applies to the 2007 and subsequent taxation years.

7. (1) Section 60 of the Act is amended by adding the following after paragraph (o.1):

(p) the total of all amounts each of which is an amount paid in the taxation year as a repayment under the Apprenticeship Incentive Grant program of an amount that was included because of paragraph 56(1)(m) in computing the taxpayer's income for the taxation year or a preceding taxation year;

(2) Subsection (1) applies to the 2007 and subsequent taxation years.

8. (1) Paragraph (b) of the definition "earned income" in subsection 63(3) of the Act is replaced by the following:

(b) all amounts that are included, or that would, but for paragraph 81(1)(a) or subsection 81(4), be included, because of section 6 or 7 or paragraph 56(1)(m), (n), (o) or (r), in computing the taxpayer's income,

(2) Subsection (1) applies to the 2007 and subsequent taxation years.

9. (1) Subsections 70(9) to (9.3) of the Act are replaced by the following:

(9) Subsection (9.01) applies to a taxpayer and a child of the taxpayer in respect of a property of the taxpayer in respect of which subsection (5) would, if this Act were read without reference to this subsection, apply if

(a) the property is, immediately before the death of the taxpayer, land or a depreciable property of a prescribed class of the taxpayer that was used principally in a fishing or farming business, carried on in Canada, in which the taxpayer, the spouse or common-law partner of the taxpayer, or a child or a parent of the taxpayer was actively engaged on a regular and continuous basis (or, in the case of property used in the operation of a woodlot, was engaged to the extent required by a prescribed forest management plan in respect of that woodlot),

(b) the child of the taxpayer was resident in Canada immediately before the day on which the taxpayer died, and

(c) as a consequence of the death of the taxpayer, the property is transferred to and becomes vested indefeasibly in the child within the period ending 36 months after the death of the taxpayer or, if written application has been made to the Minister by the taxpayer's

Repayment of
apprenticeship
incentive grant

Where
subsection
(9.01) applies

legal representative within that period, within any longer period that the Minister considers reasonable in the circumstances.

(9.01) If, because of subsection (9), this subsection applies to the taxpayer and a child of the taxpayer in respect of a property of the taxpayer that has been transferred to the child as a consequence of the death of the taxpayer, the following rules apply:

(a) where the taxpayer's legal representative does not elect in the taxpayer's return of income under this Part for the year in which the taxpayer died, to have paragraph (b) apply to the taxpayer and the child in respect of the property,

(i) paragraphs (5)(a) and (b) and section 69 do not apply to the taxpayer and the child in respect of the property,

(ii) the taxpayer is deemed to have

(A) disposed of the property immediately before the taxpayer's death, and

(B) received, at the time of the disposition of the property, proceeds of disposition in respect of that disposition of the property equal to

(I) where the property was depreciable property of a prescribed class, the lesser of

1. the capital cost to the taxpayer of the property, and

2. the amount, determined immediately before the time of the disposition of the property, that is that proportion of the undepreciated capital cost of property of that class to the taxpayer that the capital cost to the taxpayer of the property is of the capital cost to the taxpayer of all property of that class that had not, at or before that time, been disposed of, and

(II) where the property is land (other than land to which subclause (I) applies), the adjusted cost base to the taxpayer of the property immediately before the time of the disposition of the property,

(iii) the child is, immediately after the time of the disposition of the property, deemed to have acquired the property at a cost equal to the taxpayer's proceeds of disposition in respect of the disposition of the property determined under subparagraph (ii), and

(iv) where the property was depreciable property of a prescribed class, paragraphs (5)(c) and (d) apply to the taxpayer and the child in respect of the property as if the references in those paragraphs to "paragraph (a)" and "paragraph (b)" were read as "subparagraph (9.01)(a)(ii)" and "subparagraph (9.01)(a)(iii)", respectively; and

(b) where the taxpayer's legal representative elects, in the taxpayer's return of income under this Part for the taxation year in which the taxpayer died, to have this paragraph apply to the taxpayer in respect of the property,

(i) paragraphs (5)(a) and (b) and section 69 do not apply to the taxpayer and the child in respect of the property,

(ii) the taxpayer is deemed to have

(A) disposed of the property immediately before the taxpayer's death, and

(B) received, at the time of the disposition of the property, proceeds of disposition in respect of that disposition of the property equal to

(I) where the property was depreciable property of a prescribed class, the amount that the legal representative designates, which designated amount must not be greater than the greater of nor less than the lesser of

1. the fair market value of the property immediately before the time of the disposition of the property, and

2. the lesser of the capital cost to the taxpayer of the property and the amount, determined immediately before the time of the disposition of the property, that is that proportion of the undepreciated capital cost of property of that class to the taxpayer that the capital cost to the taxpayer of the property is of the capital cost to the taxpayer of all property of that class that had not, at or before that time, been disposed of, and

(II) where the property is land (other than land to which subclause (I) applies), the amount that the legal representative designates, which designated amount must not be greater than the greater of nor less than the lesser of

1. the fair market value of the property immediately before the time of the disposition of the property, and

2. the adjusted cost base to the taxpayer of the property immediately before the time of the disposition of the property,

(iii) the child is, immediately after the time of the disposition of the property, deemed to have acquired the property at a cost equal to the taxpayer's proceeds of disposition in respect of the disposition of the property determined under subparagraph (ii),

(iv) where the property was depreciable property of a prescribed class, paragraphs (5)(c) and (d) apply to the taxpayer in respect of the property as if the references in those paragraphs to "paragraph (a)" and "paragraph (b)" were read as "subparagraph (9.01)(b)(ii)" and "subparagraph (9.01)(b)(iii)", respectively,

(v) except for the purpose of this subparagraph,

(A) where the amount designated by the taxpayer's legal representative, in determining the taxpayer's proceeds of disposition in respect of the disposition of the property under subclause (ii)(B)(I), exceeds the greater of the amounts determined under subsubclauses (ii)(B)(I)1. and 2. in respect of the property, the amount designated is deemed to be equal to the greater of those amounts,

(B) where the amount designated by the taxpayer's legal representative, in determining the taxpayer's proceeds of disposition in respect of the disposition of the property under subclause (ii)(B)(II), exceeds the greater of the amounts determined

under subsubclauses (ii)(B)(II)1. and 2. in respect of the property, the amount designated is deemed to be equal to the greater of those amounts,

(vi) except for the purpose of this subparagraph,

(A) where the amount designated by the taxpayer's legal representative, in determining the taxpayer's proceeds of disposition in respect of the disposition of the property under subclause (ii)(B)(I), is less than the lesser of the amounts determined under subsubclauses (ii)(B)(I)1. and 2. in respect of the property, the amount designated is deemed to be equal to the lesser of those amounts, and

(B) where the amount designated by the taxpayer's legal representative in determining the taxpayer's proceeds of disposition in respect of the disposition of the property under subclause (ii)(B)(II), is less than the lesser of the amounts determined under subsubclauses (ii)(B)(II)1. and 2. in respect of the property, the amount designated is deemed to be equal to the lesser of those amounts.

Where
subsection
(9.11) applies

(9.1) Subsection (9.11) applies to a trust and a child of the settlor of the trust in respect of a property in respect of which subsection 104(4) or (5) would, if this Act were read without reference to this subsection, apply to the trust as a consequence of the beneficiary's death under the trust who was a spouse or a common-law partner of the settlor if

(a) the property (or property for which the property was substituted) was transferred to the trust by the settlor,

(b) subsection (6), subsection 73(1) (as that subsection applied to transfers before 2000) or subparagraph 73(1.01)(c)(i) applied to the settlor and the trust in respect of the transfer referred to in paragraph (a),

(c) the property is, immediately before the beneficiary's death, land or a depreciable property of a prescribed class of the trust that was used in a fishing or farming business carried on in Canada,

(d) the child of the settlor is, immediately before the beneficiary's death, resident in Canada, and

(e) as a consequence of the beneficiary's death, the property is transferred to and becomes vested indefeasibly in the child of the settlor within the period ending 36 months after that beneficiary's death or, if written application has been made to the Minister by the taxpayer's legal representative within that period, within any longer period that the Minister considers reasonable in the circumstances.

Transfer of
farming and
fishing
properties from
trust to settlor's
children

(9.11) If, because of subsection (9.1), this subsection applies to the trust and a child of the settlor of the trust in respect of a property of the trust that has been transferred to the child as a consequence of the beneficiary's death under the trust that was the spouse or common-law partner of the settlor, the following rules apply:

(a) where the trust does not elect, in its return of income under this Part for the taxation year in which that beneficiary died, to have paragraph (b) apply to the trust in respect of the property,

- (i) subsections 104(4) and (5) and section 69 do not apply to the trust and the child in respect of the property,
- (ii) the trust is deemed to have
 - (A) disposed of the property immediately before that beneficiary's death, and
 - (B) received, at the time of the disposition of the property, proceeds of disposition in respect of that disposition of the property equal to
 - (I) where the property was depreciable property of a prescribed class, the lesser of
 1. the capital cost to the trust of the property, and
 2. the amount, determined immediately before the time of the disposition of the property, that is that proportion of the undepreciated capital cost of property of that class to the trust that the capital cost to the trust of the property is of the capital cost to the trust of all property of that class that had not, at or before that time, been disposed of, and
 - (II) where the property is land (other than land to which subclause (I) applies), the adjusted cost base to the trust of the property immediately before the time of the disposition of the property,
 - (iii) the child is, immediately after the time of the disposition of the property, deemed to have acquired the property at a cost equal to the trust's proceeds of disposition in respect of the disposition of the property determined under subparagraph (ii); and
- (b) where the trust elects, in the trust's return of income under this Part for the taxation year in which that beneficiary died, to have this paragraph apply to the trust in respect of the property,
 - (i) subsections 104(4) and (5) do not apply to the trust in respect of the property,
 - (ii) the trust is deemed to have
 - (A) disposed of the property immediately before that beneficiary's death, and
 - (B) received, at the time of the disposition of the property, proceeds of disposition in respect of the disposition of the property equal to
 - (I) where the property was depreciable property of a prescribed class, such amount as the trust designates, which designated amount must not be greater than the greater of nor less than the lesser of
 1. the fair market value of the property immediately before the time of the disposition of the property, and
 2. the lesser of the capital cost to the trust of the property and the amount, determined immediately before the time of the disposition of the property, that is that proportion of the undepreciated capital cost of property of that class to the trust that the capital cost to the trust of the property is of the capital cost to

the trust of all property of that class that had not, at or before that time, been disposed of, and

(II) where the property is land (other than land to which subclause (I) applies), the amount that the trust designates, which designated amount must not be greater than the greater of nor less than the lesser of

1. the fair market value of the property immediately before the time of the disposition of the property, and
2. the adjusted cost base to the trust of the property immediately before the time of the disposition of the property,

(iii) the child is, immediately after the time of the disposition of the property, deemed to have acquired the property at a cost equal to the trust's proceeds of disposition in respect of the disposition of the property determined under subparagraph (ii),

(iv) except for the purpose of this subparagraph,

(A) where the amount designated by the trust, in determining the trust's proceeds of disposition in respect of the disposition of the property under subclause (ii)(B)(I), exceeds the greater of the amounts determined under subsubclauses (ii)(B)(I)1. and 2. in respect of the property, the amount designated is deemed to be equal to the greater of those amounts, and

(B) where the amount designated by the trust, in determining the trust's proceeds of disposition in respect of the disposition of the property under subclause (ii)(B)(II), exceeds the greater of the amounts determined under subsubclauses (ii)(B)(II)1. and 2. in respect of the property, the amount designated is deemed to be equal to the greater of those amounts, and

(v) except for the purpose of this subparagraph,

(A) where the amount designated by the trust, in determining the trust's proceeds of disposition in respect of the disposition of the property under subclause (ii)(B)(I), is less than the lesser of the amounts determined under subsubclauses (ii)(B)(I)1. and 2. in respect of the property, the amount designated is deemed to be equal to the lesser of those amounts, and

(B) where the amount designated by the trust, in determining the trust's proceeds of disposition in respect of the disposition of the property under subclause (ii)(B)(II), is less than the lesser of the amounts determined under subsubclauses (ii)(B)(II)1. and 2. in respect of the property, the amount designated is deemed to be equal to the lesser of those amounts;

(c) where paragraph (a) or (b) (each of which is referred to in this subsection as the "relevant provision") applied to the trust in respect of a property that was depreciable property of a prescribed class (other than where the trust's proceeds of disposition of the property under the relevant provision are redetermined under subsection 13(21.1)),

- (i) the capital cost to the child of the property, immediately after the time of the disposition, is deemed to be the amount that was the capital cost to the trust of the property, immediately before the time of the disposition, and
 - (ii) the amount, if any, by which the capital cost to the trust of the property, immediately before the time of the disposition, exceeds the amount determined under the relevant provision to be the cost of the property to the child, immediately after the time of the disposition, is, for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a), deemed to have been allowed to the child in respect of the property under regulations made for the purpose of paragraph 20(1)(a) in computing income for taxation years that ended before the child acquired the property, and
- (d) where the relevant provision applied to the trust in respect of a property and the trust's proceeds of disposition in respect of the disposition of the property determined under the relevant provision are redetermined under subsection 13(21.1), notwithstanding the relevant provision,
- (i) where the capital cost to the trust of the property, immediately before the time of the disposition, exceeds the amount so redetermined under subsection 13(21.1), for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a),
 - (A) the capital cost to the child of the property, immediately after the time of the disposition, is deemed to be the amount that was the capital cost to the trust of the property, immediately before the time of the disposition, and
 - (B) the amount, if any, by which the capital cost to the trust of the property, immediately before the time of the disposition, exceeds the amount so redetermined under subsection 13(21.1) is deemed to have been allowed to the child in respect of the property under regulations made for the purpose of paragraph 20(1)(a) in computing income for taxation years that ended before the child acquired the property, and
 - (ii) where the property is land, the cost to the child of the property is deemed to be the amount that was the trust's proceeds of disposition as redetermined under subsection 13(21.1).

Where
subsection
(9.21) applies

(9.2) Subsection (9.21) applies to a taxpayer and a child of the taxpayer in respect of a property of the taxpayer in respect of which subsection (5) would, if this Act were read without reference to this subsection, apply to the taxpayer and the child if

- (a) the property was, immediately before the death of the taxpayer, a share of the capital stock of a family fishing corporation of the taxpayer, an interest in a family fishing partnership of the taxpayer, a share of the capital stock of a family farm corporation of the taxpayer, or an interest in a family farm partnership of the taxpayer,
- (b) the child of the taxpayer was resident in Canada immediately before the day on which taxpayer died, and
- (c) as a consequence of the death of the taxpayer, the property is transferred to and becomes vested indefeasibly in the child within the period ending 36 months after the death

of the taxpayer or, if written application has been made to the Minister by the taxpayer's legal representative within that period, within any longer period that the Minister considers reasonable in the circumstances.

(9.21) If, because of subsection (9.2), this subsection applies to the taxpayer and a child of the taxpayer in respect of a property of the taxpayer that, as a consequence of the death of the taxpayer, has been transferred to the child, the following rules apply:

(a) where the taxpayer's legal representative does not elect, in the taxpayer's return of income under this Part for the taxation year in which the taxpayer died, to have paragraph

(b) apply to the taxpayer in respect of the property,

(i) paragraphs (5)(a) and (b) and section 69 do not apply to the taxpayer and the child in respect of the property,

(ii) where the property is, immediately before the death of the taxpayer, a share of the capital stock of a family fishing corporation of the taxpayer, or a share of the capital stock of a family farm corporation of the taxpayer,

(A) the taxpayer is deemed to have

(I) disposed of the property immediately before the taxpayer's death, and

(II) received proceeds of disposition in respect of that disposition equal to the adjusted cost base to the taxpayer, immediately before the time of that disposition, of the property,

(B) the child is, immediately after the time of the disposition, deemed to have acquired the property at a cost equal to the taxpayer's proceeds of disposition determined under clause (A),

(iii) where the property is, immediately before the death of the taxpayer, a partnership interest described in (9.2)(a) (other than a partnership interest to which subsection 100(3) applies),

(A) the taxpayer is, except for the purpose of paragraph 98(5)(g), deemed not to have disposed of the property as a consequence of the taxpayer's death,

(B) the child is deemed to have acquired the property at the time of the taxpayer's death at a cost equal to the cost to the taxpayer of the interest immediately before the time that is immediately before the time of the taxpayer's death, and

(C) each amount required by subsection 53(1) or (2) to be added or deducted in computing the adjusted cost base to the taxpayer, immediately before the time of the taxpayer's death, of the property is deemed to be an amount required by subsection 53(1) or (2) to be added or deducted in computing at any time at or after the time of the taxpayer's death, the adjusted cost base to the child of the property,

(b) where the taxpayer's legal representative elects, in the taxpayer's return of income under this Part for the taxation year in which the taxpayer died, to have this paragraph apply to the taxpayer in respect of the property,

(i) paragraphs (5)(a) and (b) and section 69 do not apply to the taxpayer and the child in respect of the property,

(ii) where the property is, immediately before the taxpayer's death, a share of the capital stock of a family fishing corporation of the taxpayer, or a share of the capital stock of a family farm corporation of the taxpayer,

(A) the taxpayer is deemed to have

(I) disposed of the property immediately before the taxpayer's death, and

(II) received proceeds of disposition, in respect of the disposition of the property, that are equal to the amount that the taxpayer's legal representative designates, which designated amount must not be greater than the greater of nor less than the lesser of

1. the fair market value of the property immediately before the taxpayer's death, and

2. the adjusted cost base to the taxpayer of the property immediately before the time of that disposition ,

(B) the child is, immediately after the time of the disposition, deemed to have acquired the property at a cost equal to taxpayer's proceeds of disposition in respect of the disposition of the property determined under clause (A),

(C) except for the purpose of this clause, where the amount designated by the taxpayer's representative, in determining the taxpayer's proceeds of disposition in respect of the disposition of the property under subclause (ii)(A)(II), exceeds the greater of the amounts determined under subsubclauses (ii)(A)(II)1. and 2. in respect of the property, the amount designated is deemed to be equal to the greater of those amounts, and

(D) except for the purpose of this clause, where the amount designated by the taxpayer's representative in determining the taxpayer's proceeds of disposition in respect of the disposition of the property under subclause (ii)(A)(II) is less than the lesser of the amounts determined under subsubclauses (ii)(A)(II)1. and 2. in respect of the property, the amount designated is deemed to be equal to the lesser of those amounts, and

(iii) where the property is, immediately before the death of the taxpayer, a partnership interest described in (9.2)(a) (other than a partnership interest to which subsection 100(3) applies),

(A) the taxpayer is, except for the purpose of paragraph 98(5)(g), deemed not to have disposed of the property as a consequence of the taxpayer's death,

(B) the child is deemed to have acquired the property at the time of the taxpayer's death at a cost equal to the cost to the taxpayer of the interest immediately before the time that is immediately before the death of the taxpayer, and

(C) each amount required by subsection 53(1) or (2) to be added or deducted in computing, immediately before the taxpayer's death, the adjusted cost base to the taxpayer of the property is deemed to be required by subsection 53(1) or (2) to be added or deducted in computing, at any time that is at or after the taxpayer's death, the adjusted cost base to the child of the property.

Where
subsection
9.31 applies

(9.3) Subsection (9.31) applies to a trust and a child of the settlor of the trust in respect of a property in respect of which subsection 104(4) would, if this Act were read without reference to this subsection, apply to the trust as a consequence of the beneficiary's death under the trust who was a spouse or a common-law partner of the settlor of the trust if

(a) the property (or property for which the property was substituted) was transferred to the trust by the settlor and was, immediately before that transfer, a share of the capital stock of a family farm corporation of the settlor, a share of the capital stock of a family fishing corporation of the settlor, an interest in a family farm partnership of the settlor or an interest in a family fishing partnership of the settlor,

(b) subsection (6), subsection 73(1) (as that subsection applied to transfers before 2000) or subparagraph 73(1.01)(c)(i) applied to the settlor and the trust in respect of the transfer referred to in paragraph (a),

(c) the property is, immediately before the beneficiary's death,

(i) a share of the capital stock of a Canadian corporation that would, immediately before that beneficiary's death, be a share of the capital stock of a family farm corporation of the settlor, if the settlor owned the share at that time and paragraph (a) of the definition "share of the capital stock of a family farm corporation", in subsection 70(10) were read without the words "in which the person or a spouse or common-law partner, child or parent of the person was actively engaged on a regular and continuous basis (or in the case of property used in the operation of a woodlot, was engaged to the extent required by a prescribed forest management plan in respect of that woodlot)",

(ii) a share of the capital stock of a Canadian corporation that would, immediately before that beneficiary's death, be a share of the capital stock of a family fishing corporation of the settlor, if the settlor owned the share at that time and paragraph (a) of the definition, "share of the capital stock of a family fishing corporation" in subsection 70(10) were read without reference to the words "in which the individual, the individual's spouse or common-law partner, or a child or a parent of the individual was actively engaged on a regular and continuous basis", or

(iii) a partnership interest in a partnership that carried on the business of farming or fishing in Canada in which it used all or substantially all of the property;

(d) the child of the settlor was, immediately before that beneficiary's death, resident in Canada; and

(e) as a consequence of that beneficiary's death, the property is transferred to and becomes vested indefeasibly in the child within the period ending 36 months after that beneficiary's death or, if written application has been made to the Minister by the taxpayer's legal representative within that period, within any longer period that the Minister considers reasonable in the circumstances.

(9.31) If, because of subsection (9.3), this subsection applies to the trust and a child of the settlor of the trust in respect of a property of the trust that has been distributed to the child as a consequence of the beneficiary's death under the trust that was a spouse or common-law partner of the settlor of the trust, the following rules apply:

(a) where the trust does not elect, in its return of income under this Part for the taxation year in which the beneficiary died, to have paragraph (b) apply to the trust in respect of the property

(i) subsection 104(4) and section 69 do not apply to the trust and the child in respect of the property,

(ii) where the property is, immediately before that beneficiary's death, a share described in subparagraph (9.3)(c)(i) or (ii),

(A) the trust is deemed to have

(I) disposed of the property immediately before that beneficiary's death, and

(II) received proceeds of disposition in respect of that disposition equal to the adjusted cost base to the trust of the property immediately before the time of that disposition, and

(B) the child is, immediately after the time of the disposition, deemed to have acquired the property at a cost equal to the trust's proceeds of disposition in respect of that disposition of the property determined under clause (A),

(iii) where the property is, immediately before that beneficiary's death, a partnership interest described in subparagraph (9.3)(c)(iii) (other than a partnership interest to which subsection 100(3) applies),

(A) the trust is, except for the purpose of paragraph 98(5)(g), deemed not to have disposed of the property as a consequence of that beneficiary's death,

(B) the child is, at the time of that beneficiary's death, deemed to have acquired the property at a cost equal to the cost to the trust of the interest immediately before that time, and

(C) each amount required by subsection 53(1) or (2) to be added or deducted in computing, immediately before the beneficiary's death, the adjusted cost base to the trust of the property is deemed to be an amount required by subsection 53(1) or (2)

Transfer of
family farm
or fishing
corporation or
family farm
or fishing
partnership
from trust to
children of
settlor

to be added or deducted in computing, at or after the time of the beneficiary's death, the adjusted cost base to the child of the property,

(b) where the trust elects, in its return of income under this Part for the taxation year in which the beneficiary died, to have this paragraph apply to the trust in respect of the property

(i) subsection 104(4) does not apply to the trust in respect of the property and section 69 does not apply to the trust or the child in respect of the transfer of the property,

(ii) where the property is, immediately before the beneficiary's death, a share of the capital stock of a corporation described in subparagraph (9.3)(c)(i) or (ii),

(A) the trust is deemed to have

(I) disposed of the property immediately before the beneficiary's death, and

(II) received proceeds of disposition, in respect of the disposition of the property, that are equal to the amount that the trust designates, which designated amount must not be greater than the greater of nor less than the lesser of

1. the fair market value of the property immediately before the beneficiary's death, and

2. the adjusted cost base to the trust of the property immediately before the beneficiary's death,

(B) the child is, immediately after the time of the disposition, deemed to have acquired the property at a cost equal to the trust's proceeds of disposition in respect of that disposition of the property determined under clause (A),

(iii) where the property is, immediately before that beneficiary's death, a partnership interest described in subparagraph (9.3)(c)(iii) (other than a partnership interest to which subsection 100(3) applies),

(A) the trust is, except for the purpose of paragraph 98(5)(g), deemed not to have disposed of the property as a consequence of the beneficiary's death,

(B) the child is, at the time of the beneficiary's death, deemed to have acquired the property at a cost equal to the cost to the trust of the property, immediately before the time that is immediately before the beneficiary's death, and

(C) each amount required by subsection 53(1) or (2) to be added or deducted in computing, immediately before the beneficiary's death, the adjusted cost base to the trust of the property is deemed to be an amount required by subsection 53(1) or (2) to be added or deducted in computing, at or after the time of the beneficiary's death, the adjusted cost base to the child of the property,

(iv) except for the purpose of this subparagraph, where the amount designated by the trust, in determining the trust's proceeds of disposition in respect of the disposition of the property under subclause (ii)(A)(II), exceeds the greater of the amounts determined

under subsubclauses (ii)(A)(II)1. and 2. in respect of the property, the amount designated is deemed to be equal to the greater of those amounts, and

(v) except for the purpose of this subparagraph, where the amount designated by the trust in determining the trust's proceeds of disposition in respect of the disposition of the property under subclause (ii)(A)(II) is less than the lesser of the amounts determined under subsubclauses (ii)(A)(II)1. and 2. in respect of the property, the amount designated is deemed to be equal to the lesser of those amounts.

(2) Subsection 70(9.6) of the Act is replaced by the following:

Transfer to
a parent

(9.6) Subsection (9.01) or (9.21), as the case may be, applies in respect of a transfer of a property as if the references in those subsections to "child" were read as references to "parent" if

(a) the property was acquired by a taxpayer in circumstances where any of subsections (9.01), (9.11), (9.21), (9.31), and 73(3.1) and 73(4.1) applied in respect of the acquisition,

(b) as a consequence of the death of the taxpayer the property is transferred to a parent of the taxpayer, and

(c) the taxpayer's legal representative has elected, in the taxpayer's return of income under this Part for the taxation year in which the taxpayer died, that this subsection apply in respect of the transfer.

(3) Subsection 70(9.8) of the Act is replaced by the following:

Leased farm
and fishing
property

(9.8) For the purposes of subsections (9) and 14(1), paragraph 20(1)(b), subsection 73(3), paragraph (d) of the definitions "qualified farm property" and "qualified fishing property" in subsection 110.6(1), a property of an individual is, at a particular time, deemed to be used by the individual in a fishing or farming business, as the case may be, carried on in Canada if, at that particular time, the property is being used, principally in the course of carrying on a fishing or farming business in Canada, by

(a) a corporation, a share of the capital stock of which is a share of the capital stock of a family fishing corporation, or a share of the capital stock of a family farm corporation, of the individual, the individual's spouse or common-law partner, a child of the individual or a parent of the individual, or

(b) a partnership, a partnership interest of which is an interest in a family fishing partnership, or an interest in a family farm partnership, of the individual, the individual's spouse or common-law partner, a child of the individual or a parent of the individual.

(4) The definition "interest in a family farm partnership" in subsection 70(10) of the Act is replaced by the following:

“interest in a family farm partnership”
« participation dans une société de personnes agricole familiale »

“interest in a family farm partnership” of an individual at any time means a partnership interest owned by the individual at that time if, at that time, all or substantially all of the fair market value of the property of the partnership was attributable to

(a) property that, at that time, was being used, principally in the course of carrying on a farming business in Canada, in which the individual, the individual’s spouse or common-law partner, a child of the individual, or a parent of the individual was actively engaged on a regular and continuous basis (or, in the case of property used in the operation of a woodlot, was engaged to the extent required by a prescribed forest management plan in respect of that woodlot), by

(i) the partnership,

(ii) a corporation, a share of the capital stock of which is a share of the capital stock of a family farm corporation of the individual, the individual’s spouse or common-law partner, a child of the individual or a parent of the individual,

(iii) a partnership, a partnership interest in which is an interest in a family farm partnership of the individual, the individual’s spouse or common-law partner, a child of the individual or a parent of the individual, or

(iv) the individual, the individual’s spouse or common-law partner, a child of the individual or a parent of the individual, and

(b) shares of the capital stock or indebtedness of one or more corporations all or substantially all of the fair market value of the property of which was attributable to property described in paragraph (d),

(c) partnership interests or indebtedness of one or more partnerships all or substantially all of the fair market value of the property of which was attributable to property described in paragraph (d), or

(d) properties described in any of paragraphs (a) to (c);

(5) Subsection 70(10) of the Act is amended by adding the following definitions in alphabetical order:

“interest in a family fishing partnership”
« participation dans une société de personnes de pêche familiale »

“interest in a family fishing partnership” of an individual at any time means a partnership interest owned by the individual at that time if, at that time, all or substantially all of the fair market value of the property of the partnership was attributable to

(a) property that, at that time, was being used, principally in the course of carrying on a fishing business in Canada, in which the individual, the individual’s spouse or

common-law partner, a child of the individual, or a parent of the individual was actively engaged on a regular and continuous basis, by

- (i) the partnership,
 - (ii) a corporation, a share of the capital stock of which is a share of the capital stock of a family fishing corporation of the individual, the individual's spouse or common-law partner, a child of the individual or a parent of the individual,
 - (iii) a partnership, a partnership interest in which is an interest in a family fishing partnership of the individual, the individual's spouse or common-law partner, a child of the individual or a parent of the individual, or
 - (iv) the individual, the individual's spouse or common-law partner, a child of the individual or a parent of the individual, and
- (b) shares of the capital stock or indebtedness of one or more corporations all or substantially all of the fair market value of the property of which was attributable to property described in paragraph (d),
- (c) partnership interests or indebtedness of one or more partnerships all or substantially all of the fair market value of the property of which was attributable to property described in paragraph (d), or
- (d) properties described in any of paragraphs (a) to (c);

“share of the capital stock of a family fishing corporation”
« action du capital-actions d'une société de personnes de pêche familiale »

“share of the capital stock of a family fishing corporation” of an individual at any time means a share of the capital stock of a corporation owned by the individual at that time where, at that time, all or substantially all of the fair market value of the property owned by the corporation was attributable to

(a) property that, at that time, was being used, principally in the course of carrying on a fishing business in Canada in which the individual, the individual's spouse or common-law partner, a child of the individual, or a parent of the individual was actively engaged on a regular and continuous basis, by

- (i) the corporation,
- (ii) a corporation, a share of the capital stock of which is a share of the capital stock of a family fishing corporation of the individual, the individual's spouse or common-law partner, a child of the individual or a parent of the individual,
- (iii) a corporation controlled by a corporation described in subparagraph (i) or (ii),
- (iv) a partnership, a partnership interest in which is an interest in a family fishing partnership of the individual, the individual's spouse or common-law partner, a child of the individual or a parent of the individual, or

- (v) the individual, the individual's spouse or common-law partner, a child of the individual or a parent of the individual, and
- (b) shares of the capital stock or indebtedness of one or more corporations all or substantially all of the fair market value of the property of which was attributable to property described in paragraph (d),
- (c) partnership interests or indebtedness of one or more partnerships all or substantially all of the fair market value of the property of which was attributable to property described in paragraph (d), or
- (d) properties described in any of paragraphs (a) to (c);

(6) Subsections (1) to (5) apply to a disposition, on or after May 2, 2006, of a property unless the disposition of the property was before 2007 and the taxpayer elects in writing in the taxpayer's return of income for the taxation year in which the disposition occurred to have subsection 70(9), (9.1), (9.2) or (9.3) of the Act, as that subsection read on May 1, 2006, apply to the disposition of the property.

10. (1) Paragraph 73(3)(c) of the Act is replaced by the following:

(c) subsection 69(1) does not apply in determining the proceeds of disposition of the depreciable property, the land or the eligible capital property;

(2) Paragraph 73(4)(b) of the Act is replaced by the following:

(b) subsection 69(1) does not apply in determining the proceeds of disposition of the property; and

(3) Subsections 73(3) and (4) of the Act are replaced by the following:

(3) Subsection (3.1) applies, to a taxpayer and a child of the taxpayer in respect of property that has been transferred, at any time, by the taxpayer to the child, where

(a) the property was, immediately before transfer, land in Canada or depreciable property in Canada of a prescribed class, of the taxpayer, or any eligible capital property in respect of a fishing or farming business carried on in Canada by the taxpayer,

(b) the child of the taxpayer was resident in Canada immediately before the transfer, and

(c) the property was, immediately before transfer, used principally in a fishing or farming business in which the taxpayer, the taxpayer's spouse or common-law partner, a child of the taxpayer or a parent of the taxpayer was actively engaged on a regular and continuous basis (or in the case of property used in the operation of a woodlot, was engaged to the extent required by a prescribed forest management plan in respect of that woodlot).

(3.1) If, because of subsection (3) this subsection applies to the taxpayer and a child of the taxpayer in respect of a property transferred by the taxpayer to the child of the taxpayer, the following rules apply:

Where
subsection
(3.1) applies

Inter vivos
transfer of
farm or fishing
property to
child

(a) where, immediately before the transfer, the property was depreciable property of a prescribed class, the taxpayer is deemed to have disposed of the property, at the time of the transfer, for proceeds of disposition equal to,

(i) in any case to which neither subparagraph (ii) nor (iii) applies, the taxpayer's proceeds of disposition otherwise determined,

(ii) the greater of the amounts referred to in clauses (A) and (B), if the taxpayer's proceeds of disposition otherwise determined exceed the greater of

(A) the fair market value of the property immediately before the time of the transfer, and

(B) the lesser of

(I) the capital cost to the taxpayer of the property, and

(II) the amount, determined immediately before the time of the disposition of the property, that is that proportion of the undepreciated capital cost of property of that class to the taxpayer that the capital cost to the taxpayer of the property is of the capital cost to the taxpayer of all property of that class that had not, at or before that time, been disposed of, or

(iii) if the taxpayer's proceeds of disposition otherwise determined are less than the lesser of the amounts referred to in clauses (ii)(A) and (B), the lesser of those amounts;

(b) where the property transferred was land, the taxpayer is deemed to have disposed of the property at the time of the transfer for proceeds of disposition equal to,

(i) in any case to which neither subparagraph (ii) nor (iii) applies, the proceeds of disposition otherwise determined,

(ii) if the taxpayer's proceeds of disposition otherwise determined exceed the greater of the amounts referred to in clauses (A) and (B), the greater of

(A) the fair market value of the land immediately before the time of the transfer, and

(B) the adjusted cost base to the taxpayer of the land immediately before the time of the transfer, or

(iii) if the taxpayer's proceeds of disposition otherwise determined are less than the lesser of the amounts referred to in clauses (ii)(A) and (B), the lesser of those amounts;

(c) where, immediately before the transfer, the property was eligible capital property, the taxpayer is deemed to have disposed of the property at the time of the transfer for proceeds of disposition equal to,

(i) in any case to which neither subparagraph (ii) nor (iii) applies, the taxpayer's proceeds of disposition otherwise determined,

(ii) if the taxpayer's proceeds of disposition otherwise determined exceed the greater of the amounts referred to in clauses (A) and (B), the greater of

(A) the fair market value of the property immediately before the time of the transfer, and

(B) the amount determined by the formula

$$4/3 (A \times B/C)$$

where

A is the taxpayer's cumulative eligible capital in respect of the business,

B is the fair market value of the property immediately before the transfer, and

C is the fair market value immediately before the transfer of all the taxpayer's eligible capital property in respect of the business, or

(iii) if the taxpayer's proceeds of disposition otherwise determined are less than the lesser of the amounts referred to in clauses (ii)(A) and (B), the lesser of those amounts;

(d) subsection 69(1) does not apply to the taxpayer and the child in respect of the property;

(e) the child is deemed to have acquired the property at a cost equal to the taxpayer's proceeds of disposition in respect of the disposition of the property determined under

(i) where the property is depreciable property of the taxpayer, paragraph (a), and

(ii) where the property is land of the taxpayer, paragraph (b);

(f) if the property was, immediately before the transfer, an eligible capital property of the taxpayer in respect of a business, the child is deemed to have acquired

(i) where the child does not continue to carry on the business, a capital property, immediately after the transfer, at a cost equal to the taxpayer's proceeds of disposition in respect of the disposition of the property determined under paragraph (c),

(ii) where the child continues to carry on the business, an eligible capital property and to have made an eligible capital expenditure at a cost equal to the total of

(A) the taxpayer's proceeds of disposition referred to in paragraph (c), and

(B) $4/3$ of the amount determined by the formula

$$(A \times B/C) - D$$

where

A is the amount, if any, determined for F in the definition "cumulative eligible capital" in subsection 14(5) in respect of the business immediately before the transfer,

B is the fair market value of the property immediately before the transfer,

C is the fair market value immediately before the transfer of all the taxpayer's eligible capital property in respect of the business, and

D is the amount, if any, included under paragraph 14(1)(a) in computing the taxpayer's income as a result of the disposition, and

(iii) for the purpose of determining at any subsequent time the child's cumulative eligible capital in respect of the business, an amount equal to $\frac{3}{4}$ of the amount determined under subparagraph (ii) is to be added to the amount otherwise determined in respect thereof for P in the definition "cumulative eligible capital" in subsection 14(5);

(g) for the purpose of determining, in respect of any disposition of the property, after the time of the transfer, the amount deemed to be the child's taxable capital gain, and the amount to be included in computing the child's income, there shall be added to the amount otherwise determined for Q in respect of the business in the definition "cumulative eligible capital" in subsection 14(5), the amount determined by the formula,

$$A \times B/C$$

where

A is the amount, if any, determined for Q in that definition in respect of the business immediately before the time of the transfer,

B is the fair market value immediately before that time of the property transferred, and

C is the fair market value immediately before that time of all eligible capital property of the taxpayer in respect of the business; and

(h) where the property is depreciable property of a prescribed class of the taxpayer and the capital cost to the taxpayer of the property exceeds the cost to the child of the property, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a),

(i) the capital cost to the child of the property is deemed to be the amount that was, immediately before the transfer, the capital cost to the taxpayer of the property, and

(ii) the excess is deemed to have been allowed to the child in respect of the property under regulations made under paragraph 20(1)(a) in computing income for taxation years that ended before the acquisition of the property by the child.

(4) Subsection (4.1) applies to a taxpayer and a child of the taxpayer in respect of property that has been transferred, at any time, to the child where

(a) the child was resident in Canada immediately before the transfer, and

(b) the property was, immediately before the transfer, a share of the capital stock of a family fishing corporation of the taxpayer, a share of the capital stock of a family farm corporation of the taxpayer, an interest in a family fishing partnership of the taxpayer, or an interest in a family farm partnership of the taxpayer (within the meaning assigned by subsection 70(10)).

(4.1) If, because of subsection (4), this subsection applies to the taxpayer and the taxpayer's child in respect of the transfer of the property by the taxpayer to the child,

Where
subsection
(4.1) applies

Inter vivos
transfer of
family farm
or fishing
corporations
and
partnerships

(a) where the property was, immediately before the transfer, a share of the capital stock of a family fishing corporation of the taxpayer or a share of the capital stock of a family farm corporation of the taxpayer, the taxpayer is deemed to have disposed of the property at the time of the transfer for proceeds of disposition equal to,

- (i) in any case to which neither subparagraph (ii) nor (iii) applies, the taxpayer's proceeds of disposition otherwise determined,
 - (ii) the greater of the amounts referred to in clauses (A) and (B), if the taxpayer's proceeds of disposition otherwise determined exceed the greater of
 - (A) the fair market value of the property immediately before the time of the transfer, and
 - (B) the adjusted cost base to the taxpayer of the property immediately before the time of the transfer, or
 - (iii) if the taxpayer's proceeds of disposition otherwise determined are less than the lesser of the amounts referred to in clauses (ii)(A) and (B), the lesser of those amounts;
- (b) where the property is, immediately before the transfer, a share of the capital stock of a family fishing corporation of the taxpayer or a share of the capital stock of a family farm corporation of the taxpayer, the child is deemed to have acquired the property for an amount equal to the taxpayer's proceeds of disposition in respect of the disposition of the property determined under paragraph (a),
- (c) where the property is, immediately before the transfer, an interest in a family fishing partnership of the taxpayer, or an interest in a family farm partnership of the taxpayer (other than a partnership interest to which subsection 100(3) applies),
- (i) the taxpayer is, except for the purpose of paragraph 98(5)(g), deemed not to have disposed of the property at the time of the transfer,
 - (ii) the child is deemed to have acquired the property at the time of the transfer at a cost equal to the cost to the taxpayer of the interest immediately before the transfer, and
 - (iii) each amount required by subsection 53(1) or (2) to be added or deducted in computing the adjusted cost base to the taxpayer, immediately before the transfer, of the property is deemed to be an amount required by subsection 53(1) or (2) to be added or deducted in computing at any time at or after the time of the transfer, the adjusted cost base to the child of the property, and
- (d) subsection 69(1) does not apply to the taxpayer and the child in respect of the property.

(4) Subsections (1) and (2) apply to dispositions after December 20, 2002.

(5) Subsection (3) applies to a disposition, on or after May 2, 2006, of a property unless the disposition of the property was before 2007 and the taxpayer elects in writing in the taxpayer's return of income for the taxation year in which the disposition occurred to have subsection 73(3) or 73(4) of the Act, as that subsection read on May 1, 2006, apply to the disposition of the property.

11. (1) The portion of subsection 85(5.1) of the Act before paragraph (a) is replaced by the following:

(5.1) If subsection (1) has applied in respect of the acquisition at any particular time of any depreciable property by a corporation from an individual, the cost of the property to the individual was included in computing an amount under paragraph 8(1)(r) or (s) in respect of the individual, and the amount that would be the cost of the property to the individual immediately before the transfer if this Act were read without reference to subsection 8(7) (which amount is in this subsection referred to as the “individual’s original cost”) exceeds the individual’s proceeds of disposition of the property,

(2) Subsection (1) applies to the 2006 and subsequent taxation years.

12. (1) The portion of subsection 97(5) of the Act before paragraph (a) is replaced by the following:

(5) If subsection (2) has applied in respect of the acquisition at any particular time of any depreciable property by a partnership from an individual, the cost of the property to the individual was included in computing an amount under paragraph 8(1)(r) or (s) in respect of the individual, and the amount that would be the cost of the property to the individual immediately before the transfer if this Act were read without reference to subsection 8(7) (which amount is in this subsection referred to as the “individual’s original cost”) exceeds the individual’s proceeds of disposition of the property,

(2) Subsection (1) applies to the 2006 and subsequent taxation years.

13. (1) Paragraph 104(21.2)(b) is replaced by the following:

(b) the beneficiary is, for the purposes of sections 3, 74.3 and 111 as they apply for the purposes of section 110.6,

(i) deemed to have disposed of the capital property referred to in clause (ii)(A), (B) or (C) if a taxable capital gain is determined in respect of the beneficiary for the beneficiary’s taxation year in which the designation year ends under those clauses, and

(ii) deemed to have a taxable capital gain for the beneficiary’s taxation year in which the designation year ends

(A) from a disposition of a capital property that is qualified farm property (as defined for the purpose of section 110.6) of the beneficiary equal to the amount determined by the formula

$$(A \times B \times C)/(D \times E)$$

(B) from a disposition of capital property that is a qualified small business corporation share (as defined for the purpose of section 110.6) of the beneficiary equal to the amount determined by the formula

$$(A \times B \times F)/(D \times E)$$

and

Acquisition of
certain tools —
capital cost
and deemed
depreciation

Acquisition of
certain tools —
capital cost
and deemed
depreciation

(C) from a disposition of capital property that is a qualified fishing property (as defined for the purpose of section 110.6) of the beneficiary equal to the amount determined by the formula

$$(A \times B \times I)/(D \times E)$$

where

A is the lesser of

1. the amount determined by the formula

$$G - H$$

where

G is the total of amounts designated under subsection (21) for the designation year by the trust, and

H is the total of amounts designated under subsection (13.2) for the designation year by the trust, and

2. the trust's eligible taxable capital gains for the designation year,

B is the amount, if any, by which the amount designated under subsection (21) for the designation year by the trust in respect of the beneficiary exceeds the amount designated under subsection (13.2) for the year by the trust in respect of the beneficiary for the taxation year,

C is the amount, if any, that would be determined under paragraph 3(b) for the designation year in respect of the trust's capital gains and capital losses if the only properties referred to in that paragraph were qualified farm properties of the trust disposed of by it after 1984,

D is the total of all amounts each of which is the amount determined for B for the designation year in respect of a beneficiary under the trust,

E is the total of the amounts determined for C, F and I for the designation year in respect of the beneficiary,

F is the amount, if any, that would be determined under paragraph 3(b) for the designation year in respect of the trust's capital gains and capital losses if the only properties referred to in that paragraph were qualified small business corporation shares of the trust, other than qualified farm property, disposed of by it after June 17, 1987, and

I is the amount, if any, that would be determined under paragraph 3(b) for the designation year in respect of the trust's capital gains and capital losses if the only properties referred to in that paragraph were qualified fishing properties of the trust disposed of by it on or after May 2, 2006.

(2) Subsection (1) applies to taxation years of a trust that end on or after May 2, 2006.

14. (1) Subsection 108(1) of the Act is amended by adding the following definition in alphabetical order:

“qualified
fishing
property”
« bien de
pêche
admissible »

“qualified fishing property” of an individual has the meaning assigned by subsection 110.6(1);

(2) Subsection (1) applies after May 1, 2006.

15. (1) Paragraph (b) of the description of A for the formula in the definition “annual gains limit” in subsection 110.6(1) of the Act is replaced by:

(b) the amount that would be determined in respect of the individual for the year under paragraph 3(b) in respect of capital gains and losses if the only properties referred to in that paragraph were qualified farm properties disposed of by the individual after 1984, qualified small business corporation shares disposed of by the individual after June 17, 1987, and qualified fishing properties disposed on or after May 2, 2006, and

(2) Subparagraph (a)(i) of the definition “share of the capital stock of a family farm corporation” in subsection 110.6(1) is amended by striking out the word “or” at the end of clause (D) and by adding the following after that clause:

(D.1) another corporation that is related to the corporation and of which, a share of the capital stock was a share of the capital stock of a family farm corporation of the individual, a beneficiary referred to in clause (C) or a spouse or common-law partner, child or parent of the individual or of a beneficiary referred to in clause (C), or

(3) The definitions “interest in a family farm partnership”, “qualified farm property” and “share of the capital stock of a family farm corporation” in subsection 110.6(1) of the Act are replaced by the following definitions:

“interest in a
family farm
partnership”
« participation
dans une
société de
personnes
agricole
familiale »

“interest in a family farm partnership” of an individual (other than a trust that is not a personal trust) at any time means a partnership interest owned by the individual at that time where

(a) throughout any 24-month period ending before that time, more than 50% of the fair market value of the property of the partnership was attributable to

(i) property that was used, principally in the course of carrying on the business of farming in Canada, in which the individual, a beneficiary referred to in clause (C) or a spouse, common-law partner, child or parent of the individual or of a beneficiary referred to in clause (C) was actively engaged on a regular and continuous basis, by

(A) the partnership,

(B) the individual,

- (C) where the individual is a personal trust, a beneficiary of the trust,
- (D) a spouse, common-law partner, child or parent of the individual or of a beneficiary referred to in clause (C), or
- (E) a corporation, a share of the capital stock of which was a share of the capital stock of a family farm corporation of the individual, a beneficiary referred to in clause (C) or a spouse, common-law partner, child or parent of the individual or of a beneficiary referred to in clause (C),
- (F) a partnership, a partnership interest of which was an interest in a family farm partnership of the individual, a beneficiary referred to in clause (C) or a spouse, common-law partner, child or parent of the individual or of a beneficiary referred to in clause (C),

(ii) shares of the capital stock or indebtedness of one or more corporations all or substantially all of the fair market value of the property of which was attributable to properties described in subparagraph (iv), or

(iii) a partnership interest in or indebtedness of one or more partnerships all or substantially all of the fair market value of the property of which was attributable to properties described in subparagraph (iv), or

(iv) properties described in either subparagraph (i) or (ii), and

(b) at that time, all or substantially all of the fair market value of the property of the partnership was attributable to property described in subparagraph (a)(iv);

“qualified
farm property”
often avoided
admissible :

“qualified farm property” of an individual (other than a trust that is not a personal trust) at any time means a property owned at that time by the individual, the spouse or common-law partner of the individual or a partnership, an interest in which is an interest in a family farm partnership of the individual or the individual's spouse or common-law partner that is

(a) real property that was used principally in the course of carrying on the business of farming in Canada by,

(i) the individual,

(ii) where the individual is a personal trust, a beneficiary of the trust that is entitled to receive directly from the trust any income or capital of the trust,

(iii) a spouse, common-law partner, child or parent of a person referred to in subparagraph (i) or (ii),

(iv) a corporation, a share of the capital stock of which is a share of the capital stock of a family farm corporation of an individual referred to in any of subparagraphs (i) to (iii), or

(v) a partnership, an interest in which is an interest in a family farm partnership of an individual referred to in any of subparagraphs (i) to (iii),

(b) a share of the capital stock of a family farm corporation of the individual or the individual's spouse or common-law partner,

(c) an interest in a family farm partnership of the individual or the individual's spouse or common-law partner, or

(d) an eligible capital property (which is deemed to include capital property to which paragraph 70(5.1)(b) or 73(3.1)(f) applies) used by a person or partnership referred to in any of subparagraphs (a)(i) to (v), or by a personal trust from which the individual acquired the property, in the course of carrying on the business of farming in Canada;

“share of the capital stock of a family farm corporation”
« action du capital-actions d'une société agricole familiale »

“share of the capital stock of a family farm corporation” of an individual (other than a trust that is not a personal trust) at any time means a share of the capital stock of a corporation owned by the individual at that time where

(a) throughout any 24-month period ending before that time, more than 50% of the fair market value of the property owned by the corporation was attributable to

(i) property that was used, principally in the course of carrying on the business of farming in Canada, in which the individual, a beneficiary referred to in clause (C) or a spouse, common-law partner, child or parent of the individual or of such a beneficiary, was actively engaged on a regular and continuous basis, by

(A) the corporation,

(B) the individual,

(C) where the individual is a personal trust, a beneficiary of the trust,

(D) a spouse, common-law partner, child or parent of the individual or of a beneficiary referred to in clause (C), or

(E) another corporation that is related to the corporation and of which a share of the capital stock was a share of the capital stock of a family farm corporation of the individual, a beneficiary referred to in clause (C) or a spouse, common-law partner, child or parent of the individual or of a beneficiary referred to in clause (C),

(F) a partnership, an interest in which was an interest in a family farm partnership of the individual, a beneficiary referred to in clause (C) or a spouse, common-law partner, child or parent of the individual or of such a beneficiary,

(ii) shares of the capital stock or indebtedness of one or more corporations all or substantially all of the fair market value of the property of which was attributable to property described in subparagraph (iv),

(iii) a partnership interest in or indebtedness of one or more partnerships all or substantially all of the fair market value of the property of which was attributable to properties described in subparagraph (iv), or

(iv) properties described in any of subparagraphs (i) or (iii), and

(b) at that time, all or substantially all of the fair market value of the property owned by the corporation was attributable to property described in subparagraph (a)(iv);

(4) Subsection 110.6(1) of the Act is amended by adding the following definitions in alphabetical order:

“interest in a family fishing partnership”
« participation dans une société de personnes de pêche familiale »

“interest in a family fishing partnership” of an individual (other than a trust that is not a personal trust) at any time means a partnership interest owned by the individual at that time where

(a) throughout any 24-month period ending before that time, more than 50% of the fair market value of the property of the partnership was attributable to

(i) property that was used, principally in the course of carrying on the business of fishing in Canada, in which the individual, a beneficiary referred to in clause (C) or a spouse, common-law partner, child or parent of the individual or of a beneficiary referred to in clause (C) was actively engaged on a regular and continuous basis, by

(A) the partnership,

(B) the individual,

(C) where the individual is a personal trust, a beneficiary of the trust,

(D) a spouse, common-law partner, child or parent of the individual or of a beneficiary referred to in clause (C), or

(E) a corporation, a share of the capital stock of which was a share of the capital stock of a family fishing corporation of the individual, a beneficiary referred to in clause (C) or a spouse, common-law partner, child or parent of the individual or of a beneficiary referred to in clause (C),

(F) a partnership, a partnership interest of which was an interest in a family fishing partnership of the individual, a beneficiary referred to in clause (C) or a spouse, common-law partner, child or parent of the individual or of a beneficiary referred to in clause (C),

(ii) shares of the capital stock or indebtedness of one or more corporations all or substantially all of the fair market value of the property of which was attributable to properties described in subparagraph (iv), or

(iii) a partnership interest in or indebtedness of one or more partnerships all or substantially all of the fair market value of the property of which was attributable to properties described in subparagraph (iv), or

(iv) properties described in either subparagraph (i) or (ii), and

(b) at that time, all or substantially all of the fair market value of the property of the partnership was attributable to property described in subparagraph (a)(iv);

“qualified
fishing
property”
« bien de
pêche
admissible »

“qualified fishing property” of an individual (other than a trust that is not a personal trust) at any time means a property owned at that time by the individual, the spouse or common-law partner of the individual or a partnership, an interest in which is an interest in a family fishing partnership of the individual or the individual's spouse or common-law partner that is

(a) real property or a fishing vessel that was used principally in the course of carrying on the business of fishing in Canada by,

(i) the individual,

(ii) where the individual is a personal trust, a beneficiary of the trust that is entitled to receive directly from the trust any income or capital of the trust,

(iii) a spouse, common-law partner, child or parent of a person referred to in subparagraph (i) or (ii),

(iv) a corporation, a share of the capital stock of which is a share of the capital stock of a family fishing corporation of an individual referred to in any of subparagraphs (i) to (iii), or

(v) a partnership, an interest in which is an interest in a family fishing partnership of an individual referred to in any of subparagraphs (i) to (iii),

(b) a share of the capital stock of a family fishing corporation of the individual or the individual's spouse or common-law partner,

(c) an interest in a family fishing partnership of the individual or the individual's spouse or common-law partner, or

(d) an eligible capital property (which is deemed to include capital property to which paragraph 70(5.1)(b) or 73(3.1)(f) applies) used by a person or partnership referred to in any of subparagraphs (a)(i) to (v), or by a personal trust from which the individual acquired the property, in the course of carrying on the business of fishing in Canada;

“share of the
capital stock of
a family
fishing
corporation”
« action du
capital-actions
d'une société
de pêche
familiale »

“share of the capital stock of a family fishing corporation” of an individual (other than a trust that is not a personal trust) at any time means a share of the capital stock of a corporation owned by the individual at that time where

(a) throughout any 24-month period ending before that time, more than 50% of the fair market value of the property owned by the corporation was attributable to

(i) property that was used, principally in the course of carrying on the business of fishing in Canada, in which the individual, a beneficiary referred to in clause (C) or a spouse, common-law partner, child or parent of the individual or of such a beneficiary, was actively engaged on a regular and continuous basis, by

(A) the corporation,

- (B) the individual,
- (C) where the individual is a personal trust, a beneficiary of the trust,
- (D) a spouse, common-law partner, child or parent of the individual or of a beneficiary referred to in clause (C), or
- (E) another corporation that is related to the corporation and of which, a share of the capital stock was a share of the capital stock of a family fishing corporation of the individual, a beneficiary referred to in clause (C) or a spouse, common-law partner, child or parent of the individual or of a beneficiary referred to in clause (C),
- (F) a partnership, an interest in which was an interest in a family fishing partnership of the individual, a beneficiary referred to in clause (C) or a spouse, common-law partner, child or parent of the individual or of such a beneficiary,
- (ii) shares of the capital stock or indebtedness of one or more corporations all or substantially all of the fair market value of the property of which was attributable to property described in subparagraph (iv),
- (iii) a partnership interest in or indebtedness of one or more partnerships all or substantially all of the fair market value of the property of which was attributable to properties described in subparagraph (iv), or
- (iv) properties described in any of subparagraphs (i) or (iii), and
- (b) at that time, all or substantially all of the fair market value of the property owned by the corporation was attributable to property described in subparagraph (a)(iv);

(5) Section 110.6 of the Act is amended by adding the following after subsection (1.1)

(1.2) For the purposes of applying the definition “qualified farm property” of an individual, at any time, a property owned at that time by the individual, the spouse or common-law partner of the individual, or a partnership, an interest in which is an interest in a family fishing partnership of the individual or of the individual’s spouse or common-law partner, will not be considered to have been used in the course of carrying on the business of fishing in Canada, unless

- (a) throughout the period of at least 24 months immediately preceding that time, the property or property for which the property was substituted (in this paragraph referred to as “the property”) was owned, by any one or more of
 - (i) the individual, or a spouse, common-law partner, child or parent of the individual,
 - (ii) a partnership, an interest in which is an interest in a family fishing partnership of the individual or of the individual’s spouse or common-law partner,
 - (iii) where the individual is a personal trust, the individual from whom the trust acquired the property or a spouse, common-law partner, child or parent of that individual, or
 - (iv) a personal trust from which the individual or a child or parent of the individual acquired the property, and

(b) either

(i) in at least 2 years while the property was owned by the one or more persons referred to in paragraph (a),

(A) the gross revenue of a person referred to in paragraph (a) from the fishing business referred to in clause (B) for the period during which that person was the owner exceeded the income of that person from all other sources for that period, and

(B) the property was used principally in a fishing business carried on in Canada in which an individual referred to in paragraph (a) was actively engaged on a regular and continuous basis, or

(ii) throughout a period of at least 24 months while the property was owned by one or more persons or partnerships referred to in paragraph (a), the property was used by the partnership referred to in paragraph (a) or a corporation a share of the capital stock of which is a share of the capital stock of a family fishing corporation of any individual described in paragraph (a) in a fishing business in which an individual referred to in paragraph (a) was actively engaged on a regular and continuous basis.

Property used
in a farming
business

(1.3) For the purposes of applying the definition “qualified farm property” of an individual, at any time, a property owned at that time by the individual, the spouse or common-law partner of the individual, or a partnership, an interest in which is an interest in a family farm partnership of the individual or of the individual’s spouse or common-law partner, will not be considered to have been used in the course of carrying on the business of farming in Canada, unless

(a) throughout the period of at least 24 months immediately preceding that time, the property or property for which the property was substituted (in this paragraph referred to as “the property”) was owned, by any one or more of

(i) the individual, or a spouse, common-law partner, child or parent of the individual,

(ii) a partnership, an interest in which is an interest in a family farm partnership of the individual or of the individual’s spouse or common-law partner,

(iii) where the individual is a personal trust, the individual from whom the trust acquired the property or a spouse, common-law partner, child or parent of that individual, or

(iv) a personal trust from which the individual or a child or parent of the individual acquired the property, and

(b) where paragraph (c) does not apply, either

(i) in at least 2 years while the property was owned by the one or more persons referred to in paragraph (a),

(A) the gross revenue of a person referred to in paragraph (a) from the farming business referred to in clause (B) for the period during which that person was the owner exceeded the income of that person from all other sources for that period, and

(B) the property was used principally in a farming business carried on in Canada in which an individual referred to in paragraph (a) was actively engaged on a regular and continuous basis, or

(ii) throughout a period of at least 24 months while the property was owned by one or more persons or partnerships referred to in paragraph (a), the property was used by the partnership referred to in paragraph (a) or a corporation a share of the capital stock of which is a share of the capital stock of a family farming corporation of any individual described in paragraph (a) in a farming business in which an individual referred to in paragraph (a) was actively engaged on a regular and continuous basis, or

(c) where the property or property for which the property was substituted was last acquired by the individual or partnership before June 18, 1987 or after June 17, 1987 under an agreement in writing entered into before that date,

(i) in the year the property was disposed of by the individual, the property was used principally in the course of carrying on the business of farming in Canada by

(A) the individual, or a spouse, common-law partner, child or parent of the individual,

(B) a beneficiary referred to in subparagraph (a)(ii) in the definition “qualified farm property” or a spouse, common-law partner, child or parent of that beneficiary,

(C) a corporation referred to in subparagraph (a)(iv) in the definition “qualified farm property”,

(D) a partnership referred to in subparagraph (a)(v) in the definition “qualified farm property”, or

(E) a personal trust from which the individual acquired the property, or

(ii) in at least 5 years during which the property was owned by the individual, the property was used principally in the course of carrying on the business of farming in Canada by

(A) the individual, or a spouse, common-law partner, child or parent of the individual,

(B) a beneficiary referred to in subparagraph (a)(ii) in the definition “qualified farm property” or a spouse, common-law partner, child or parent of that beneficiary,

(C) a corporation referred to in subparagraph (a)(iv) in the definition “qualified farm property”,

(D) a partnership referred to in subparagraph (a)(v) in the definition “qualified farm property”, or

(E) a personal trust from which the individual acquired the property.

(6) The description of A in the formula in paragraph 110.6(2)(a) of the Act is replaced by the following:

A is the total of all amounts each of which is an amount deducted under this section in computing the individual's taxable income for a preceding taxation year that ended

- (i) before 1988, or
- (ii) after October 17, 2000,

(7) Paragraph 110.6(2)(d) of the Act is replaced by the following:

(d) the amount that would be determined in respect of the individual for the year under paragraph 3(b) in respect of capital gains and capital losses if the only properties referred to in paragraph 3(b) were qualified farm properties of the individual disposed of after June 17, 1987.

(8) Paragraph 110.6(2.1)(d) of the Act is replaced by the following:

(d) the amount that would be determined in respect of the individual for the year under paragraph 3(b) (to the extent that that amount is not included in computing the amount determined under paragraph (2)(d) or (2.2)(d) in respect of the individual) in respect of capital gains and capital losses if the only properties referred to in paragraph 3(b) were qualified small business corporation shares of the individual disposed of after June 17, 1987.

(9) Section 110.6 of the Act is amended by adding the following after subsection (2.1):

(2.2) In computing the taxable income for a taxation year of an individual (other than a trust) who was resident in Canada throughout the year and who, in the year or a preceding year, disposed of a property that was, at the time of disposition, a qualified fishing property of the individual, there may be deducted such amount as the individual may claim not exceeding the least of

- (a) the amount determined by the formula in paragraph (2)(a) in respect of the individual for the year,
- (b) the amount, if any, by which the individual's cumulative gains limit at the end of that year exceeds the total of all amounts each of which is an amount deducted under subsection (2) or (2.1) in computing the individual's taxable income for the year,
- (c) the amount, if any, by which the individual's annual gains limit for the year exceeds the total of all amounts each of which is an amount deducted under subsection (2) or (2.1) in computing the individual's taxable income for the year, and
- (d) the amount that would be determined in respect of the individual for the year under paragraph 3(b) in respect of capital gains and capital losses if the only properties referred to in paragraph 3(b) were qualified fishing properties of the individual disposed of on or after May 2, 2006.

(10) Subsections 110.6(4) to (8) of the Act are replaced by the following:

(4) Notwithstanding subsections (2), (2.1) and (2.2), the total amount that may be deducted under this section in computing an individual's income for a taxation year shall not

Capital gains
deduction —
qualified
fishing
property

Maximum
capital gains
deduction

exceed the amount determined by the formula in paragraph (2)(a) in respect of the individual for the year.

Deemed
resident in
Canada

(5) For the purposes of subsections (2), (2.1) and (2.2), an individual is deemed to have been resident in Canada throughout a particular taxation year if

- (a) the individual was resident in Canada at any time in the particular taxation year, and
- (b) the individual was resident in Canada throughout the immediately preceding taxation year, or throughout the immediately following taxation year.

Failure to
report capital
gain

(6) Notwithstanding subsections (2), (2.1) and (2.2), no amount may be deducted under this section in respect of a capital gain of an individual for a particular taxation year in computing the individual's taxable income for the particular taxation year, if

- (a) the individual knowingly or under circumstances amounting to gross negligence
 - (i) fails to file the individual's return of income for the particular taxation year within one year after the taxpayer's filing-due date for the particular taxation year, or
 - (ii) fails to report the capital gain in the individual's return of income for the particular taxation year, and
- (b) the Minister establishes the facts justifying the denial of such an amount under this section.

Deduction not
permitted

(7) Notwithstanding subsections (2), (2.1), and (2.2), no amount may be deducted under this section in computing an individual's taxable income for a taxation year in respect of a capital gain of the individual for the taxation year, if the capital gain is from a disposition of property which disposition is part of a series of transactions or events

- (a) to which subsection 55(2) would apply if this Act were read without reference to paragraph 55(3)(b), or
- (b) in which any property is acquired by a corporation or partnership for consideration that is significantly less than the fair market value of the property at the time of acquisition (other than an acquisition as the result of an amalgamation or merger of corporations or the winding-up of a corporation or partnership or a distribution of property of a trust in satisfaction of all or part of a corporation's capital interest in the trust).

Deduction not
permitted

(8) Notwithstanding subsections (2), (2.1) and (2.2), where an individual has a capital gain for a taxation year from the disposition of a property and it can reasonably be concluded, having regard to all the circumstances, that a significant part of the capital gain is attributable to the fact that dividends were not paid on a share (other than a prescribed share) or that dividends paid on such a share in the year or in any preceding taxation year were less than 90% of the average annual rate of return on that share for that year, no amount in respect of that capital gain shall be deducted under this section in computing the individual's taxable income for the year.

(11) Paragraph 110.6(12)(b) of the Act is replaced by the following:

(b) the amount, if any, that would be determined in respect of the trust for that year under paragraph 3(b) in respect of capital gains and capital losses if the only properties referred to in that paragraph were qualified farm properties disposed of by it after 1984, qualified small business corporation shares disposed of by it after June 17, 1987, and qualified fishing properties disposed of by it on or after May 2, 2006, and

(12) Subsections (1) and (3) to (5) apply to dispositions of property that occur on or after May 2, 2006.

(13) Subsection (2) applies to dispositions of property that occur after 2001 and before May 2, 2006.

(14) Subsection (6) applies to preceding taxation years that end after October 17, 2000.

(15) Subsections (7) to (11) apply to taxation years that end on or after May 2, 2006.

16. (1) Paragraphs 117(2)(c) and (d) of the Act, as enacted by subsection 58(3) of the *Budget Implementation Act, 2006*, chapter 4 of the Statutes of Canada, 2006, are replaced by the following:

(c) if the amount taxable is greater than the amount determined for the year in respect of \$72,756, but is equal to or less than the amount determined for the year in respect of \$118,285, the total of the amounts determined in respect of the taxation year under paragraphs (a) and (b) plus 26% of the amount by which the amount taxable exceeds the amount determined in respect of \$72,756; and

(d) if the amount taxable is greater than the amount that would be determined for the year in respect of \$118,285, the total of the amounts determined in respect of the taxation year under paragraphs (a), (b) and (c) plus 29% of the amount by which the amount taxable exceeds the amount determined in respect of \$118,285.

(2) Subsection (1) applies to the 2007 and subsequent taxation years.

17. (1) The portion of subsection 117.1(1) of the Act before paragraph (a) is replaced by the following:

117.1 (1) The amount of \$1,000 referred to in the formula in paragraph 8(1)(s) and each of the amounts expressed in dollars in subsection 117(2), the description of B in subsection 118(1), subsection 118(2), paragraph (a) of the description of B in subsection 118(10), subsection 118.01(2), the descriptions of C and F in subsection 118.2(1), subsections 118.3(1), 122.5(3) and 122.51(1) and (2) and Part I.2 in relation to tax payable under this Part or Part I.2 for a taxation year shall be adjusted so that the amount to be used under those provisions for the year is the total of

(2) Subsection (1) applies to the 2008 and subsequent taxation years.

18. (1) The portion of the description of B before paragraph (a) in subsection 118(3) of the Act is replaced by the following:

B is the lesser of \$2,000 and

(2) Section 118 of the Act is amended by adding the following after subsection (9):

Canada
Employment
Credit

(10) For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted the amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the taxation year; and

B is the lesser of

(a) \$1,000, and

(b) the amount that would be the individual's income for the taxation year from all offices and employments if this Act were read without reference to section 8.

(3) Subsections (1) and (2) apply to the 2006 and subsequent taxation years, except that in its application to the 2006 taxation year, the reference to "\$1,000" in paragraph (a) in the description of B in subsection 118(10) of the Act, as enacted by subsection (2), shall be read as a reference to "\$250".

19. (1) The Act is amended by adding the following after section 118.01:

Definitions

118.02. (1) In this section,

"eligible
public transit
pass"

"eligible public transit pass" means a document

« laissez-passer
de transport
admissible »

(a) issued by or on behalf of a qualified Canadian transit organization, and

(b) identifying the right of an individual who is the holder or owner of the document to use public commuter transit services of that qualified Canadian transit organization on an unlimited number of occasions and on any day on which the public commuter transit services are offered during an uninterrupted period of at least 28 days.

"public
commuter
transit
services"
« services de
transport en
commun »

"public commuter transit services" means services offered to the general public, ordinarily for a period of at least five days per week, of transporting individuals, from a place in Canada to another place in Canada, by means of bus, ferry, subway, train or tram, and in respect of which it can reasonably be expected that those individuals would return daily to the place of their departure.

"qualified
Canadian
transit
organization"
« organisme
de transport
canadien
admissible »

"qualified Canadian transit organization" means a person authorised, under a law of Canada or a province, to carry on in Canada a business that is the provision of public commuter transit services, which business is carried on through a permanent establishment in Canada.

“qualifying relation”
« *proche admissible* »

“qualifying relation” of an individual for a taxation year means a person who is

- (a) the individual’s spouse or common-law partner at any time in the taxation year, or
- (b) a child of the individual who has not, during the taxation year, attained the age of 19 years.

Transit pass
tax credit

(2) For the purpose of computing the tax payable under this Part by an individual for a taxation year there may be deducted the amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the taxation year; and

B is the amount determined by the formula

$$C - D$$

where

C is the total of all amounts, each of which is the portion of the cost of an eligible public transit pass attributable to the use of public commuter transit services in the taxation year by the individual or by a person who is in the taxation year a qualifying relation of the individual, and

D is the total of all amounts, each of which is the amount of a reimbursement, allowance or any other form of assistance that any person is or was entitled to receive in respect of an amount included in computing the value of C (other than an amount that is included in computing the income for any taxation year of that person and that is not deductible in computing the taxable income of that person).

Apportion-
ment of credit

(3) Where more than one individual is entitled to a deduction under this section for a taxation year in respect of an eligible public transit pass, the total of all amounts so deductible shall not exceed the maximum amount that would be so deductible for the year by any one of those individuals for that eligible public transit pass if that individual were the only individual entitled to deduct an amount for the year under this section, and if the individuals cannot agree as to what portion of the amount each can so deduct, the Minister may fix the portions.

(2) Subsection (1) applies to the 2006 and subsequent taxation years, in respect of the use of public commuter transit services after June 2006.

20. (1) Section 118.6 of the Act is amended by adding the following after subsection (2):

Post-secondary
textbook
credit

(2.1) If an amount may be deducted under subsection (2) in computing the individual’s tax payable for a taxation year, there may be deducted in computing the individual’s tax payable under this Part for the year the amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year; and

B is the total of the products obtained when

(a) \$65 is multiplied by the number of months referred to in paragraph (a) of the description of B in subsection 118.6(2), and

(b) \$20 is multiplied by the number of months referred to in paragraph (b) of that description.

(2) The portion of subsection 118.6(3) of the Act before paragraph (a) is replaced by the following:

(3) In calculating the amount deductible under subsection (2) or (2.1), the reference in that subsection (2) to “full-time student” is to be read as “student” if either

Students
eligible for the
disability tax
credit

(3) Subparagraph 118.6(3)(b)(iii) of the English version of the Act is replaced by the following:

(iii) an impairment with respect to the individual’s ability in feeding or dressing themselves, by a medical doctor or an occupational therapist,

(iii.1) an impairment with respect to the individual’s ability in walking, by a medical doctor, an occupational therapist or a physiotherapist,

(4) Subparagraph 118.6(3)(b)(iv) of the French version of the Act is replaced by the following:

(iv) s’il s’agit d’une déficience quant à la capacité de s’alimenter ou de s’habiller, un médecin en titre ou un ergothérapeute;

(iv.1) s’il s’agit d’une déficience quant à la capacité de marcher, un médecin en titre, un ergothérapeute, ou un physiothérapeute,

(5) Subparagraph 118.6(3)(b)(iv) of the English version of the Act is replaced by the following:

(iv) an impairment with respect to the individual’s ability in mental functions necessary for everyday life (within the meaning assigned by paragraph 118.4(1)(c.1)), by a medical doctor or a psychologist.

(6) Subparagraph 118.6(3)(b)(v) of the French version of the Act is replaced by the following:

(v) s’il s’agit d’une déficience des fonctions mentales nécessaires aux activités de la vie courante, un médecin en titre ou un psychologue.

(7) Subsections (1) and (2) apply to the 2006 and subsequent taxation years.

(8) Subsections (3) and (4) apply to the 2005 and subsequent taxation years in respect of certifications made by a physiotherapist after February 22, 2005.

(9) Subsections (5) and (6) apply to the 2005 and subsequent taxation years.

21. (1) Subsection 118.61(1) of the Act is replaced by the following:

118.61 (1) In this section, an individual's unused tuition, textbook and education tax credits at the end of a taxation year is the amount determined by the formula

$$A + (B - C) - (D + E)$$

where

- A is the amount determined under this subsection in respect of the individual at the end of the preceding taxation year;
- B is the total of all amounts each of which may be deducted under section 118.5 or 118.6 in computing the individual's tax payable under this Part for the year;
- C is the lesser of the value of B and the amount that would be the individual's tax payable under this Part for the year if no amount were deductible under this Division (other than an amount deductible under this section and any of sections 118, 118.01, 118.02, 118.3 and 118.7);
- D is the amount that the individual may deduct under subsection (2) for the year; and
- E is the tuition, textbook and education tax credits transferred for the year by the individual to the individual's spouse, common-law partner, parent or grandparent.

(2) Paragraphs 118.61(2)(a) and (b) of the Act are replaced by the following:

(a) the amount determined under subsection (1) in respect of the individual at the end of the preceding taxation year, and

(b) the amount that would be the individual's tax payable under this Part for the year if no amount were deductible under this Division (other than an amount deductible under this section and any of sections 118, 118.01, 118.02, 118.3 and 118.7).

(3) Subsection 118.61(3) of the Act is repealed.

(4) Subsection 118.61(4) of the Act is replaced by the following:

(4) For the purpose of determining the amount that may be deducted under subsection (2) or (2.1) in computing an individual's tax payable for a taxation year, in circumstances where the appropriate percentage for the taxation year is different from the appropriate percentage for the preceding taxation year, the individual's unused tuition, textbook and education tax credits at the end of the preceding taxation year is deemed to be the amount determined by the formula

$$A/B \times C$$

where

- A is the appropriate percentage for the current taxation year;
- B is the appropriate percentage for the preceding taxation year; and

C is the amount that would be the individual's unused tuition, textbook and education tax credits at the end of the preceding taxation year if this section were read without reference to this subsection.

(5) Subsections (1) to (3) apply to the 2006 and subsequent taxation years.

(6) Subsection (4) applies to the 2005 and subsequent taxation years, except that for the 2005 and 2006 taxation years, the references to "the unused tuition, textbook and education tax credits" in subsection 118.61(4) of the Act, as enacted by subsection (4), are to be read as references to "the unused tuition and education tax credits".

22. (1) The description of A in section 118.8 of the Act is replaced by the following:

A is the tuition, textbook and education tax credits transferred for the year by the spouse or common-law partner to the individual;

(2) Subparagraph (b)(ii) of the description of C in section 118.8 is replaced by the following:

(ii) is the amount that would be the spouse's or common-law partner's tax payable under this Part for the year if no amount were deductible under this Division (other than an amount deductible under section 118, 118.01, 118.02, 118.3, 118.61 or 118.7).

(3) Subsection (1) applies to the 2006 and subsequent taxation years.

(4) Subsection (2) applies to the 2005 and subsequent taxation years except that in its application to the 2005 taxation year, subparagraph (b)(ii) of the description of C in section 118.8 of the Act, as enacted by subsection (2), is to be read without its reference to section 118.02.

23. (1) The portion of section 118.81 of the Act before paragraph (a) is replaced by the following:

118.81 In this subdivision, the tuition, textbook and education tax credits transferred for a taxation year by a person to an individual is the lesser of

(2) The description of B in paragraph 118.81(a) of the Act is replaced by the following:

B is the amount that would be the person's tax payable under this Part for the year if no amount were deductible under this Division (other than an amount deductible under any of sections 118, 118.01, 118.02, 118.3, 118.61 and 118.7), and

(3) Subsections (1) and (2) apply to the 2006 and subsequent taxation years.

24. (1) Section 118.9 of the Act is replaced by the following:

118.9 If for a taxation year a parent or grandparent of an individual (other than an individual in respect of whom the individual's spouse or common-law partner deducts an amount under section 118 or 118.8 for the year) is the only person designated in writing by the individual for the year for the purpose of this section, there may be deducted in computing

Tuition,
textbook and
education tax
credits
transferred

Transfer to
parent or
grandparent

the tax payable under this Part for the year by the parent or grandparent, as the case may be, the tuition, textbook and education tax credits transferred for the year by the individual to the parent or grandparent, as the case may be.

(2) Subsection (1) applies to the 2006 and subsequent taxation years.

25. (1) Subparagraph 118.91(b)(i) of the Act is replaced by the following:

(i) such of the deductions permitted under subsections 118(3), (10) and 118.6(2.1) and sections 118.01, 118.02, 118.1, 118.2, 118.5, 118.6, 118.62 and 118.7 as can reasonably be considered wholly applicable, and

(2) Subsection (1) applies to the 2006 and subsequent taxation years.

26. (1) Sections 118.92 to 118.94 of the Act are replaced by the following:

118.92 In computing an individual's tax payable under this Part, the following provisions shall be applied in the following order: subsections 118(1) and (2), section 118.7, subsections 118(3) and (10) and sections 118.01, 118.02, 118.3, 118.61, 118.5, 118.6, 118.9, 118.8, 118.2, 118.1, 118.62 and 121.

118.93 Where a separate return of income with respect to a taxpayer is filed under subsection 70(2), 104(23) or 150(4) for a particular period and another return of income under this Part with respect to the taxpayer is filed for a period ending in the calendar year in which the particular period ends, for the purpose of computing the tax payable under this Part by the taxpayer in those returns, the total of all deductions claimed in all those returns under any of subsections 118(3) and (10) and sections 118.01 to 118.7 and 118.9 shall not exceed the total that could be deducted under those provisions for the year with respect to the taxpayer if no separate returns were filed under any of subsections 70(2), 104(23) and 150(4).

118.94 Sections 118, 118.01, 118.02 and 118.2, subsections 118.3(2), (3) and 118.6(2.1) and sections 118.6, 118.8 and 118.9 do not apply for the purpose of computing the tax payable under this Part for a taxation year by an individual who at no time in the year is resident in Canada unless all or substantially all of the individual's income for the year is included in computing the individual's taxable income earned in Canada for the year.

(2) Subsection (1) applies to the 2006 and subsequent taxation years.

27. (1) Paragraph 118.95(a) of the Act is replaced by the following:

(a) such of the deductions as the individual is entitled to under subsections 118(3) and (10) and sections 118.01, 118.02, 118.1, 118.2, 118.5, 118.6, 118.62 and 118.7 as can reasonably be considered wholly applicable to the taxation year, and

(2) Subsection (1) applies to the 2006 and subsequent taxation years.

28. (1) Subparagraph (b)(i) of the description of A in subsection 122.51(2) of the Act are replaced by the following:

(i) the amount determined by the formula

$$(25/C) \times D$$

where

Ordering of
credits

Credits in
separate
returns

Tax payable by
non-residents
(credits
restricted)

C is the appropriate percentage for the particular taxation year, and

D is the total of all amounts, each of which is the amount determined by the formula in subsection 118.2(1) for the purpose of computing the individual's tax payable under this Part for a taxation year that ends in the calendar year, and

(2) Subsection (1) applies to the 2006 and subsequent taxation years.

29. (1) The portion of paragraph (a) of the definition “full-rate taxable income” in subsection 123.4(1) of the Act before subparagraph (i) is replaced by the following:

(a) if the corporation is not a corporation described in paragraph (b) or (c) for the year, the amount by which that portion of the corporation's taxable income for the year (or, for greater certainty, if the corporation is non-resident, that portion of its taxable income earned in Canada for the year) that is subject to tax under subsection 123(1) exceeds the total of

(2) Subparagraph (a)(iv) of the definition “full-rate taxable income” in subsection 123.4(1) of the Act is replaced by the following:

(iv) if the corporation is a credit union throughout the year and the corporation deducted an amount for the year under subsection 125(1) (because of the application of subsections 137(3) and (4)), the amount if any, by which, the lesser of the amounts described in paragraphs 137(3)(a) and (b) exceeds the amount described in paragraph 137(3)(c) in respect of the corporation for the year.

(3) Subparagraph (b)(ii) of the definition “full-rate taxable income” in subsection 123.4(1) of the Act is replaced by the following:

(ii) the least of the amounts, if any, determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the year, and

(4) Subsection (1) applies to taxation years that begin on or after May 2, 2006.

(5) Subsections (2) and (3) apply to the 2008 and subsequent taxation years.

30. (1) The portion of subsection 125(1) of the Act before paragraph (a) is replaced by the following:

Small business
deduction

125. (1) There may be deducted from the tax otherwise payable under this Part for a taxation year by a corporation that was, throughout the taxation year, a Canadian-controlled private corporation, an amount equal to the corporation's small business deduction rate for the taxation year multiplied by the least of

(2) Section 125 of the Act is amended by adding the following after subsection (1):

Small business
deduction rate

(1.1) For the purpose of subsection (1), a corporation's small business deduction rate for a taxation year is the total of

(a) that proportion of 16% that the number of days in the taxation year that are before 2008 is of the number of days in the taxation year,

(b) that proportion of 16.5% that the number of days in the taxation year that are in 2008 is of the number of days in the taxation year, and

(c) that proportion of 17% that the number of days in the taxation year that are after 2008 is of the number of days in the taxation year.

(3) Subsection 125(2) of the Act is replaced by the following:

Business limit

(2) For the purpose of this section, a corporation's business limit for a taxation year is \$400,000 unless the corporation is associated in the taxation year with one or more other Canadian-controlled private corporations, in which case, except as otherwise provided in this section, its business limit is nil.

(4) Paragraph 125(3)(a) of the Act is replaced by the following:

(a) if the total of the percentages assigned in the agreement does not exceed 100%, \$400,000 multiplied by the percentage assigned to that corporation in the agreement; and

(5) The description of M in the definition "specified partnership income" in subsection 125(7) of the Act is replaced by the following:

M is the lesser of

(i) \$400,000, and

(ii) the product obtained when \$1,096 is multiplied by the total of all amounts each of which is the number of days in a fiscal period of the partnership that ends in the year, and

(6) Subsections (1) and (2) apply to the 2008 and subsequent taxation years.

(7) Subsection (3) applies to the 2007 and subsequent taxation years except that, for a 2007 or 2008 taxation year that began before 2007, the reference in subsection 125(2) of the Act, as enacted by subsection (3), to "\$400,000" is to be read as a reference to the total of

(a) that proportion of \$300,000 that the number of days in the taxation year that are before 2007 is of the number of days in the taxation year, and

(b) that proportion of \$400,000 that the number of days in the taxation year that are after 2006 is of the number of days in the taxation year.

(8) Subsection (4) applies to the 2007 and subsequent taxation years except that, for a 2007 or 2008 taxation year that began before 2007, the reference in subsection 125(3) of the Act, as enacted by subsection (4), to "\$400,000" is to be read as a reference to "the amount that would, if the corporation were not associated in the year with any other corporation, be its business limit for the year determined without reference to subsections (5) and (5.1)".

(9) Subsection (5) applies to partnership fiscal periods that end after 2006.

31. (1) The portion of paragraph 127(5)(a) of the Act before clause (ii)(B) is replaced by the following:

(a) the total of

- (i) the taxpayer's investment tax credit at the end of the year in respect of property acquired before the end of the year, of the taxpayer's apprenticeship expenditure for the year or a preceding taxation year, of the taxpayer's flow-through mining expenditure for the year or a preceding taxation year, of the taxpayer's pre-production mining expenditure for the year or a preceding taxation year or of the taxpayer's SR&ED qualified expenditure pool at the end of the year or at the end of a preceding taxation year, and
- (ii) the lesser of

(A) the taxpayer's investment tax credit at the end of the year in respect of property acquired in a subsequent taxation year, of the taxpayer's apprenticeship expenditure for a subsequent taxation year, of the taxpayer's flow-through mining expenditure for a subsequent taxation year, of the taxpayer's pre-production mining expenditure for a subsequent taxation year or of the taxpayer's SR&ED qualified expenditure pool at the end of the subsequent taxation year to the extent that an investment tax credit was not deductible under this subsection for the subsequent taxation year, and

(2) Subsection 127(7) of the Act is replaced by the following:

Investment tax
credit of
testamentary
trust

(7) If, in a particular taxation year of a taxpayer who is a beneficiary under a testamentary trust or under an *inter vivos* trust that is deemed to be in existence by section 143, an amount is determined in respect of the trust under paragraph (a), (a.1), (a.4), (b) or (e.1) of the definition "investment tax credit" in subsection (9) for its taxation year that ends in that particular taxation year, the trust may, in its return of income for its taxation year that ends in that particular taxation year, designate the portion of that amount that can, having regard to all the circumstances including the terms and conditions of the trust, reasonably be considered to be attributable to the taxpayer and was not designated by the trust in respect of any other beneficiary of the trust, and that portion shall be added in computing the investment tax credit of the taxpayer at the end of that particular taxation year and shall be deducted in computing the investment tax credit of the trust at the end of its taxation year that ends in that particular taxation year.

(3) The portion of subsection 127(8) of the Act before paragraph (a) is replaced by the following:

Investment tax
credit of
partnership

(8) Subject to subsection (28), where, in a particular taxation year of a taxpayer who is a member of a partnership, an amount would be determined in respect of the partnership, for its taxation year that ends in the particular taxation year, under paragraph (a), (a.1), (a.4), (b) or (e.1) of the definition "investment tax credit" in subsection (9), if

(4) Subsection 127(8.1) of the Act is replaced by the following:

Investment tax
credit of
limited partner

(8.1) Notwithstanding subsection (8), where a taxpayer is a limited partner of a partnership at the end of a fiscal period of the partnership, the amount, if any, determined under subsection (8) to be added in computing the taxpayer's investment tax credit at the end of the taxpayer's taxation year in which that fiscal period ends shall not exceed the lesser of

- (a) such portion of the amount that would, if this section were read without reference to this subsection, be determined under subsection (8) to be the amount to be added in com-

puting the taxpayer's investment tax credit at the end of the taxpayer's taxation year in which that fiscal period ends as is considered to have arisen because of the expenditure by the partnership of an amount equal to the taxpayer's expenditure base (as determined under subsection (8.2) in respect of the partnership) at the end of that fiscal period, and

(b) the taxpayer's at-risk amount in respect of the partnership at the end of that fiscal period.

(5) Subparagraph 127(8.2)(b)(i) of the Act is amended by striking out the word "or" at the end of clause (A) and by adding the following after that clause:

(A.1) an amount that would be the apprenticeship expenditure of the partnership if the reference to "\$2,000" in paragraph (a) of the definition "apprenticeship expenditure" in subsection 127(9) were read as a reference to "\$20,000" and paragraph (b) of that definition were read without reference to "10% of", or

(6) Subsection 127(8.3) of the Act is replaced by the following:

(8.3) For the purpose of subsection (8), and subject to subsection (8.4), where a taxpayer is a member of a partnership (other than a specified member) throughout a fiscal period of the partnership, there shall be added to the amount that can reasonably be considered to be that member's share of the amount determined under subsection (8) the amount, if any, that is such portion of the amount determined under subsection (8.31) in respect of that fiscal period as is reasonable in the circumstances (having regard to the investment in the partnership, including debt obligations of the partnership, of each of those members of the partnership who was a member of the partnership throughout the fiscal period of the partnership and who was not a specified member of the partnership during the fiscal period of the partnership).

(8.31) For the purpose of subsection (8.3), the amount determined under this subsection in respect of a fiscal period of a partnership is the amount, if any, by which

(a) the total of all amounts each of which is an amount that would, if the partnership were a person and its fiscal period were its taxation year, be determined in respect of the partnership under paragraph (a), (a.1), (a.4), (b) or (e.1) of the definition "investment tax credit" in subsection (9) for a taxation year that is the fiscal period,

exceeds

(b) the total of

(i) the total of all amounts each of which is the amount determined under subsection (8) in respect of the fiscal period to be the share of the total determined under paragraph (a) of a partner of the partnership (other than a member of the partnership who was at any time in the fiscal period of the partnership a specified member of the partnership),

(ii) the total of all amounts each of which is the amount determined under subsection (8), with reference to subsection (8.1), in respect of the fiscal period to be the share of the total determined under paragraph (a) of a partner of the partnership who was at any time in the fiscal period of the partnership a specified member of the partnership, and

Investment tax credit – allocation of unallocated partnership ITCs

Amount of unallocated partnership ITC

(iii) the amount, if any, by which

(A) the amount that would be determined under subparagraph (i) in respect of the partners referred to in subparagraph (ii) if subparagraph (i) applied only to those partners and those partners were not specified members of the partnership,

exceeds

(B) the amount determined under subparagraph (ii) in respect of those partners.

(7) The definition “investment tax credit” in subsection 127(9) of the Act is amended by adding the following after paragraph (a.3):

(a.4) the total of all amounts each of which is an apprenticeship expenditure of the taxpayer for the taxation year in respect of an eligible apprentice,

(8) Subsection 127(9) of the Act is amended by adding the following in alphabetical order:

“apprenticeship expenditure” of a taxpayer for a taxation year in respect of an eligible apprentice is the lesser of

“apprenticeship
expenditure”
« dépense
d'apprentissage »

(a) \$2,000, and

(b) 10% of the eligible salary and wages payable by the taxpayer in the taxation year to the eligible apprentice in respect of the eligible apprentice's employment, in the taxation year and on or after May 2, 2006, by the taxpayer in a business carried on in Canada by the taxpayer in the taxation year.

“eligible
apprentice”
« apprenti
admissible »

“eligible apprentice” means an individual who is employed in a prescribed trade in Canada during the first two years of the individual's apprenticeship contract, which contract is registered with Canada or a province under an apprenticeship program designed to certify or license individuals in the trade.

“eligible salary
and wages”
« traitement et
salaire
admissible »

“eligible salary and wages” payable by a taxpayer to an eligible apprentice means the amount, if any, that is the salary and wages payable by the taxpayer to the eligible apprentice in respect of the first 24 months of the apprenticeship (other than remuneration that is based on profits, bonuses, and amounts described in section 6 or 7, and amounts deemed to be incurred by subsection 78(4)).

(9) The portion of subsection 127(10.2) of the Act before paragraph (a) of the description of A is replaced by the following:

Expenditure
limit
determined

(10.2) For the purpose of subsection (10.1), a corporation's expenditure limit for a particular taxation year is the amount determined by the formula

$$(\$6,000,000 - 10A) \times B/C$$

where

A is the greater of \$400,000 and either

(10) Subsection 127(11.1) of the Act is amended by striking out the word “and” at the end of paragraph (c.3) and by adding the following after that paragraph:

(c.4) the amount of a taxpayer’s apprenticeship expenditure for a taxation year is deemed to be the amount of the taxpayer’s apprenticeship expenditure for the year otherwise determined less the amount of any government assistance or non-government assistance in respect of the expenditure for the year that, at the time of the filing of the taxpayer’s return of income for the year, the taxpayer has received, is entitled to receive or can reasonably be expected to receive; and

(11) Section 127 of the Act is amended by adding the following after subsection (11.3):

(11.4) For the purpose of the definition “eligible salary and wages” in subsection (9), the eligible salary and wages payable by a taxpayer in a taxation year to an eligible apprentice in respect of the eligible apprentice’s employment in the taxation year is, if the eligible apprentice is employed by any other taxpayer who is related to the taxpayer (including a partnership that has a member that is related to the taxpayer) in the calendar year that includes the end of the taxpayer’s taxation year, deemed to be nil unless the taxpayer is designated in prescribed form by all of those related taxpayers to be the only employer of the eligible apprentice for the purpose of the taxpayer applying that definition to the salary and wages payable by the taxpayer to the eligible apprentice in that taxation year, in which case

(a) the eligible salary and wages payable by the taxpayer in the taxation year to the eligible apprentice in respect of the eligible apprentice’s employment in the taxation year shall be the amount determined without reference to this subsection; and

(b) the eligible salary and wages payable to the eligible apprentice by each of the other related taxpayers in their respective taxation years that end in the calendar year is deemed to be nil.

(12) Subsections (1) to (8), (10) and (11) apply to taxation years that end on or after May 2, 2006 except that, in respect of a taxpayer’s taxation year that ends in 2006, subsections 127(8.3) and (8.31) of the Act, as enacted by subsection (6), shall be read as follows:

(8.3) Where

(a) the amount that would, if the partnership were a person and its fiscal period were its taxation year, be determined in respect of the partnership under paragraph (a), (a.1), (a.4), (b) or (e.1) of the definition “investment tax credit” in subsection (9) for a taxation year

exceeds

(b) the total of all amounts each of which is the amount determined, under subsections (8) and (8.1), to be the share thereof of a limited partner of the partnership,

such portion of the excess as is reasonable in the circumstances (having regard to the investment in the partnership, including debt obligations of the partnership, of each of those

Special rule for
eligible salary
and wages -
apprentices

members of the partnership who was a member of the partnership throughout the fiscal period of the partnership and who was not a limited partner of the partnership during the fiscal period of the partnership) shall, for the purposes of subsection (8), be considered to be the amount that may reasonably be considered to be that member's share of the amount described in paragraph (a).

(13) Subsection (9) applies to the 2007 and subsequent taxation years except that, for a 2007 or 2008 taxation year that immediately follows a taxation year that ended before 2007, the reference in the formula in subsection 127(10.2) of the Act, as enacted by subsection (1), to “\$6,000,000” is to be read as a reference to “\$5,000,000” and the reference to “\$400,000” in the description of A is to be read as a reference to “\$300,000”.

32. (1) Paragraph 127.531(a) of the Act is replaced by the following:

(a) an amount deducted under subsection 118(1), (2) or (10), 118.01(2), 118.02(2) or 118.3(1) or any of sections 118.5 to 118.7 in computing the individual's tax payable for the year under this Part; or

(2) Subsection (1) applies to the 2006 and subsequent taxation years.

33. (1) Clause 128(2)(e)(iii)(A) of the Act is replaced by the following:

(A) under section 118, 118.01, 118.02, 118.2, 118.3, 118.5, 118.6, 118.8 or 118.9,

(2) Subsection (1) applies to the 2006 and subsequent taxation years.

34. (1) The portion of subsection 137(3) of the Act before paragraph (a) is replaced by the following:

(3) There may be deducted from the tax otherwise payable under this Part for a taxation year by a corporation that was, throughout the year, a credit union, an amount equal to the amount determined by multiplying the rate that would, if subsection 125(1.1) applied to the corporation for the year, be its small business deduction rate for the year within the meaning assigned by that subsection, by the amount, if any, by which the lesser of

(2) Subsection (1) applies to the 2008 and subsequent taxation years.

35. (1) Subsection 137.1(9) of the Act is replaced by the following:

(9) The tax payable under this Part by a corporation for a taxation year throughout which it was a deposit insurance corporation (other than a corporation incorporated under the Canada Deposit Insurance Corporation Act) is the amount determined by the following formula:

$$(28\% - A) \times B$$

where

A is the rate that would, if subsection 125(1.1) applied to the corporation for the taxation year, be the corporation's small business deduction rate for the taxation year within the meaning assigned by that subsection, and

B is the corporation's taxable income for the taxation year.

Additional
deduction

Special tax rate

(2) Subsection (1) applies to the 2008 and subsequent taxation years.

36. (1) Subsections 190.1(1.1) and (1.2) of the Act are repealed.

(2) The portion of subsection 190.1(3) after paragraph (b) is repealed.

(3) Subsection 190.1(4) of the Act is amended by striking out the word “and” at the end of paragraph (a), by adding the word “and” at the end of paragraph (b) and by adding the following after paragraph (b):

(c) an amount may be claimed under paragraph (3)(b) in computing a corporation’s tax payable under this part for a taxation year that ends before July 1, 2006 in respect of its unused Part I tax credit for a taxation year that ends after July 1, 2006 (referred to in this paragraph as the “credit taxation year”) only to the extent the unused Part I tax credit exceeds the amount, if any, by which

(i) the amount that would, if this Part were read as it applied to the 2005 taxation year, be the corporation’s tax payable under this Part for the credit taxation year

exceeds

(ii) the corporation’s tax payable under this Part for the credit taxation year.

(4) Subsections (1) to (3) apply in respect of taxation years that end on or after July 1, 2006.

37. (1) Subsections 190.15(1) to (3) of the Act are replaced by the following:

190.15 (1) For the purposes of this Part, the capital deduction of a corporation for a taxation year during which it was at any time a financial institution is \$1 billion unless the corporation was related to another financial institution at the end of the year, in which case, subject to subsection (4), its capital deduction for the year is nil.

(2) A corporation that is a financial institution at any time during a taxation year and that was related to another financial institution at the end of the year may file with the Minister an agreement in prescribed form on behalf of the related group of which the corporation is a member under which an amount that does not exceed \$1 billion is allocated among the members of the related group for the taxation year.

(3) The Minister may request a corporation that is a financial institution at any time during a taxation year and that was related to any other financial institution at the end of the year to file with the Minister an agreement referred to in subsection (2) and, if the corporation does not file such an agreement within 30 days after receiving the request, the Minister may allocate an amount among the members of the related group of which the corporation is a member for the year not exceeding \$1 billion.

(2) Subsection (1) applies to taxation years that end on or after July 1, 2006.

38. (1) Sections 190.16 and 190.17 of the Act are replaced by the following:

Capital
deduction

Related
financial
institution

Idem

Transitional Provisions

Application to
taxation year
including
July 1, 2006

190.16 (1) If a taxation year of a corporation begins before and ends on or after July 1, 2006, notwithstanding any other provision of this Part, the tax payable under this Part by the corporation for the taxation year is equal to the total of

(a) that proportion of the amount that would be the tax payable by the corporation under this Part for the taxation year, if this Part were read as it applied to the 2005 taxation year, that the number of days in the taxation year that are before that day is of the number of days in the taxation year, and

(b) that proportion of the amount that would, if this Part were read without reference to this section, be the tax payable by the corporation under this Part for the taxation year that the number of days in the taxation year that are on or after that day is of the number of days in the taxation year.

Proportionate
allocation

(2) Any allocation made for the purpose of paragraph (1)(a) under subsection 190.15(2) or (3) of the Act shall be in the same proportion as the allocation, if any, made for the purpose of paragraph (1)(b) under subsection 190.15(2) or (3) of the Act.

Capital
deduction
deemed

(3) For the purpose of applying subsection 190.15(5) to a corporation for a taxation year that is described in that subsection in circumstances where the “first such taxation year” referred to in that subsection is a taxation year to which subsection (1) applies, the capital deduction of the corporation for that “first such taxation year” is deemed to be the total of

(a) that proportion of the capital deduction amount allocated to the corporation for the purposes of paragraph (1)(a) that the number of days in the taxation year that are before July 1, 2006 is of the number of days in the taxation year; and

(b) that proportion of the capital deduction amount allocated to the corporation for the purposes of paragraph (1)(b) that the number of days in the taxation year that are after June 30, 2006 is of the number of days in the taxation year.

(2) Subsection (1) applies to taxation years that end on or after July 1, 2006.

Explanatory Notes

Preface

These explanatory notes are provided to assist in understanding proposed amendments to the *Income Tax Act*.

The Honourable James M. Flaherty, P.C., M.P.

Minister of Finance

These notes are intended for information purposes and should not be construed as an official interpretation of the provisions they describe.

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Clause 2

Apprentice mechanic's tool costs

ITA

8(1)(r)

Paragraph 8(1)(r) of the Act allows an eligible apprentice mechanic to deduct the cost of certain extraordinary expenditures incurred by the apprentice in respect of the cost of eligible tools.

In general terms, extraordinary expenditures are the costs incurred by an apprentice in a taxation year in respect of eligible tools acquired in the taxation year in excess of a threshold. This threshold is provided for in the description of B in the formula in subparagraph 8(1)(r)(ii) as the lesser of two amounts. The first is the cost of the eligible tools. The second is the greater of \$1,000 and 5% of the apprentice mechanic's income in the taxation year from employment as an apprentice mechanic.

Clause (B) of the description B in the formula in subparagraph 8(1)(r)(ii) is amended – for the 2007 and subsequent taxation years consequential to the introduction of a deduction for tools of a tradesperson (new paragraph 8(1)(s)), the new Canada employment credit (new subsection 118(10) of the Act) and the annual \$1,000 apprenticeship grant program (which is described in the note accompanying new paragraph 56(1)(m) of the Act). As amended, clause (B) of the description B is the greater of:

- the total of \$500 (the tools deduction in paragraph 8(1)(s) for tradespersons) and the amount on which the taxpayer's Canada employment credit under subsection 118(10) for the taxation year is calculated, and
- 5% of the total of
 - the apprentice's income from employment as an eligible apprentice mechanic, computed without reference to the deduction in paragraph (8)(1)(r), and
 - the amount by which the amount required by paragraph 56(1)(m) (apprenticeship incentive grant) to be included in computing the apprentice mechanic income for the taxation year exceeds the amount required by paragraph 60(p) of the Act (repaid apprentice grants) to be deducted in computing that income.

In general terms, the deduction for apprentice mechanic tools applies only to the cost of eligible tools that is in excess of the greater of the above two amounts.

Deduction – tradesperson's tools

ITA

8(1)(s)

New paragraph 8(1)(s) of the Act provides a deduction of up to \$500 in respect of the cost of eligible tools acquired in a taxation year by an employed tradesperson. The amount that may be deducted (not exceeding \$500) is the amount by which the lesser of

- the tradesperson's income for the taxation year from employment as a tradesperson (including the new apprenticeship incentive grant); and
- the cost of the tradesperson's eligible tools acquired in the year

exceeds

- \$1,000 (indexed after 2007).

Eligible tools are described in new subsection 8(6.1).

This amendment applies to the 2006 and subsequent taxation years.

Apprentice mechanics

ITA

8(6)

Subsection 8(6) of the Act provides three special rules for the purpose of the apprentice mechanics' tools deduction in paragraph (8)(1)(r). Subparagraph 6(a)(i) is amended to clarify that federally registered apprenticeships qualify. Further, the rule in paragraph 8(6)(b) – which describes eligible tools – is amended, consequential to the tool deduction in new paragraph 8(1)(s) for tradespersons, to exclude from the meaning of eligible tools electronic communication devices and electronic data processing equipment (unless the device or equipment can be used only for the purpose of measuring, locating or calculating).

This amendment applies to tools acquired on or after May 2, 2006.

Eligible tool of tradesperson

ITA

8(6.1)

New subsection 8(6.1) of the Act provides that an eligible tool of a taxpayer – for the purpose of the tools deduction for tradespersons in new paragraph 8(1)(s) – is a tool (including ancillary equipment) that

- is acquired by the taxpayer on or after May 2, 2006 for use in connection with the taxpayer's employment as a tradesperson,
- has not been used for any purpose before it is acquired by the taxpayer,
- is certified in prescribed form by the taxpayer's employer to be required to be provided by the taxpayer as a condition of, and for use in, the taxpayer's employment as a tradesperson, and
- is, unless the device or equipment can be used only for the purpose of measuring, locating or calculating, not an electronic communication device or electronic data processing equipment.

This amendment applies to the 2006 and subsequent taxation years.

Cost of tool

ITA

8(7)

Subsection 8(7) of the Act provides that, where an apprentice mechanic is entitled to deduct an amount for a taxation year under paragraph 8(1)(r) in respect of eligible tools, the cost to the apprentice mechanic of the tools is reduced *pro rata* by the deductible amount.

Subsection 8(7) is amended to apply also where a tradesperson is entitled to deduct an amount from employment income in respect of eligible tools under new paragraph 8(1)(s).

This amendment applies to the 2006 and subsequent taxation years.

Clause 3

Eligible capital property

ITA

14

Section 14 of the Act provides rules concerning the tax treatment of expenditures and receipts of a taxpayer in respect of eligible capital properties and operates on a pooling basis. Annual deductions, which are calculated as a percentage of this pool, may be claimed under paragraph 20(1)(b) of the Act. "Eligible capital property" includes goodwill, customer lists, farm quotas and licenses of unlimited duration.

Election re capital gain

ITA

14(1.01)

Subsection 14(1.01) of the Act permits a taxpayer to elect, in the taxpayer's return of income for a taxation year, to report a capital gain on the disposition of an eligible capital property in respect of which the taxpayer can identify the cost of the particular property. Where the taxpayer has so elected, the taxpayer is deemed to have disposed of a capital property with an adjusted cost base equal to that cost, for proceeds of disposition equal to the actual proceeds of the eligible capital property. Paragraph 14(1.01)(a) removes the property from the cumulative eligible capital pool by coincidentally deeming the proceeds of disposition of the eligible capital property to be equal to its original cost.

Subsection 14(1.01) is amended to clarify that it is the eligible capital expenditure made by the taxpayer to acquire the eligible capital property that must be verifiable. The amended provision will allow a taxpayer to elect in the taxpayer's return of income for the taxation year of the disposition, or with an election under subsection 83(2) of the Act. This allows a taxpayer to consider the resulting capital gain when making a capital dividend election.

This amendment generally applies to dispositions of eligible capital property that occur in taxation years that end after February 27, 2000.

Eligible capital property – election re capital gain

ITA

14(1.01)(c)

Subsection 14(1.01) of the Act, as proposed to be amended as described above, permits a taxpayer to elect, in the taxpayer's return of income for a taxation year, to report a capital gain on the disposition of an eligible capital property in respect of which the taxpayer can identify the eligible capital expenditure made by the taxpayer to acquire the eligible capital property. Where the taxpayer has so elected, the taxpayer is deemed to dispose of a capital property with an adjusted cost base equal to that cost for proceeds of disposition equal to actual proceeds from the disposition of the eligible capital property.

Paragraph 14(1.01)(c) provides that, where the eligible capital property is "qualified farm property" (within the meaning assigned by subsection 110.6(1) of the Act), the capital property deemed by subsection 14(1.01) to be disposed of is also deemed to be, at the time of that disposition, a qualified farm property of the taxpayer. That paragraph thus ensures that the resulting capital gain from the disposition may qualify for the capital gains exemption under section 110.6 for qualified farm property.

Paragraph 14(1.01)(c) is amended to provide that, where the eligible capital property disposed of is a "qualified farm property" or a "qualified fishing property" (within the meaning assigned by subsection 110.6(1)) of the taxpayer at the time of its disposition, the capital property deemed by subsection 14(1.01) to be disposed of will also be deemed to have been, at that time, a "qualified farm property" or a "qualified fishing property", as the case may be. The amendment is consequential to the introduction of the definition "qualified fishing property" in subsection 110.6(1) and the capital gains deduction in new subsection 110.6(2.2) for qualified fishing property.

This amendment applies to dispositions of property that occur on or after May 2, 2006.

Election re property acquired with pre-1972 outlays or expenditures

ITA

14(1.02)

Subsection 14(1.01) of the Act does not allow a taxpayer to elect under that subsection in respect of a property acquired prior to 1972. New subsection 14(1.02) is added to allow a taxpayer to make a similar election in respect of property that would, if an outlay or expenditure were made after 1971 to acquire the property, be eligible for the election under subsection 14(1.01). For the purposes of calculating the capital gain to the taxpayer under this election, the adjusted cost base of such property is deemed to be nil and the proceeds of disposition would be determined under subsection 21(1) of the *Income Tax Application Rules*.

New subsection 14(1.02) applies to dispositions of eligible capital property that occur after December 20, 2002.

Election re property acquired with pre-1972 outlays or expenditures

ITA

14(1.02)(c)

Subsection 14(1.01) of the Act does not allow a taxpayer to elect under that subsection in respect of a property acquired before 1972. Subsection 14(1.02) allows a taxpayer to make a similar election in respect of property that would, if an outlay or expenditure were made after 1971 to acquire the property, be eligible for the election under subsection 14(1.01).

Paragraph 14(1.02)(c) provides that, where the eligible capital property is “qualified farm property” (within the meaning assigned by subsection 110.6(1) of the Act), the capital property deemed by subsection 14(1.02) to be disposed of is deemed to be, at the time of that disposition, a qualified farm property of the taxpayer. This is similar to the deeming rule in paragraph 14(1.01)(c).

Paragraph 14(1.02)(c) is amended to provide that, where the eligible capital property disposed of is a “qualified farm property” or a “qualified fishing property” (within the meaning assigned by subsection 110.6(1)) of the taxpayer at the time of its disposition, the capital property deemed by subsection 14(1.02) to be disposed of will also be deemed to have been, at that time, a “qualified farm property” or a “qualified fishing property”, as the case may be. The amendment is consequential to the introduction of the definition “qualified fishing property” in subsection 110.6(1) and the capital gains deduction in new subsection 110.6(2.2) for qualified fishing property.

This amendment applies to dispositions of property that occur on or after May 2, 2006.

Non-application of subsections 14(1.01) and (1.02)

ITA

14(1.03)

New subsection 14(1.03) of the Act is added, concurrently with the amendment of subsection 14(1.01) and the addition of new subsection 14(1.02), to preclude a taxpayer from making an election under those subsections in respect of eligible capital property that is goodwill. Subsection 14(1.03) also precludes an election by a corporation under those subsections for property acquired in circumstances where an election was made under subsection 85(1) or (2) of the Act, if the amount agreed on as the corporation’s cost under those subsections was less than the fair market value of the property at the time it was so acquired. However, this rule only applies in circumstances where the corporation is dealing at non-arm’s length with the transferor of the property and the eligible capital expenditure of the transferor to acquire the property cannot be determined. The exclusion from electing for property acquired in a rollover prevents the conversion of property with no determinable cost into property with a cost that is determinable for tax purposes.

New subsection 14(1.03) applies generally to dispositions of eligible capital property that occur after February 27, 2004, and in particular to dispositions of goodwill that occur after December 20, 2002.

Deemed capital gain

ITA
14(1.2)

New subsection 14(1.2) of the Act is added consequential to the introduction of the definition “qualified fishing property” in subsection 110.6(1) and the capital gains deduction in new subsection 110.6(2.2) of the Act for qualified fishing property. New subsection 14(1.2) deems certain amounts included in an individual’s income for a taxation year in respect of eligible capital property attributable to “qualified fishing property” to be a taxable capital gain of the individual from the disposition of qualified fishing property in the year.

The amount deemed to be a taxable capital gain is limited to the lesser of two amounts. The first amount is the amount included in the taxpayer’s income for the year under paragraph 14(1)(b) from the fishing business. The second amount (determined in respect of eligible capital property that was, at the time of disposition, a “qualified fishing property” as defined in subsection 110.6(1)) is the amount (to the extent that, that amount had not already been included in the taxpayer’s taxable capital gains), if any, by which,

- $\frac{1}{2}$ of the total of all amounts each of which is the taxpayer’s proceeds of disposition from dispositions, on or after May 2, 2006, of the eligible capital property exceeds
- $\frac{1}{2}$ of the total of all amounts each of which is an eligible capital expenditure made in respect of the eligible capital property of the fishing business disposed of or a non-deductible outlay or expense of the taxpayer made in respect of the disposition of the eligible capital properties.

This amendment applies to dispositions of capital property that occur on or after May 2, 2006.

Definition of cumulative eligible capital

ITA
14(5)

The definition “cumulative eligible capital” in subsection 14(5) of the Act provides for the calculation of a taxpayer’s cumulative eligible capital property pool for the purpose of determining the taxpayer’s allowable deduction in respect of eligible capital property for the year.

Description of E

The description of E in the definition “cumulative eligible capital” is the total of all amounts each of which is $\frac{3}{4}$ of the amount by which the amount in paragraph (a) exceeds the amount in paragraph (b). In general terms, amounts included in paragraph (a) are amounts a taxpayer is entitled to receive as a result of transferring consideration that is eligible capital property in respect of a business carried on by the taxpayer (or formerly carried on by the taxpayer). Amounts included in paragraph (b) are outlays or expenses of the taxpayer that were not otherwise deductible in computing income and which were incurred for the purpose of making the transfer of consideration.

Paragraph (a) of the description of E is reworded to clarify that it applies to an amount that is received or receivable by a taxpayer on account of capital in respect of a business carried on by the taxpayer or formerly carried on by the taxpayer, other than to an amount that

- is included in computing the taxpayer’s income, or deducted in computing any balance of undeducted outlays, expenses or other amounts,
- reduces the cost or capital cost of property or an outlay or expense, or
- is included in computing any gain or loss of the taxpayer from a disposition of capital property.

Paragraph (b) of the description of E is amended consequential to the amendment to paragraph (a).

This amendment – which is consequential to the extension of the \$500,000 capital gains deduction to certain capital gains realized by an individual who disposes of qualified fishing property – generally applies to amounts that become receivable on or after May 2, 2006.

Clause 4

Reserve - property disposed of to a child

ITA

40(1.1)

Section 73 of the Act provides that an individual may dispose of certain farm or small business properties – i.e., certain land or depreciable property used for farming, shares of the capital stock of a family farm corporation, an interest in a family farm partnership and shares of a small business corporation – to the individual's children on a tax-deferred rollover basis or on a taxable basis, depending upon whether certain conditions are met. Where that disposition is not made on a rollover basis and a gain arises, subsection 40(1.1) of the Act provides that the taxpayer may claim a reserve over a maximum ten-year period.

Subsection 40(1.1) is amended to extend the application of this provision to dispositions by a taxpayer to their children, of land or depreciable property in Canada of a prescribed class, that was used in the business of fishing by the taxpayer (or by the taxpayer's spouse or common-law partner, a child of the taxpayer or a parent of the taxpayer), shares of the capital stock of a family fishing corporation of the taxpayer and interests in a family fishing partnership of the taxpayer (such a share or interest having the meaning assigned by subsection 70(10)) of the Act.

This amendment generally applies to dispositions of property that occur on or after May 2, 2006.

Clause 5

Reserve – former property disposed of to a child

ITA

44(1.1)

Section 44 of the Act provides special rules where a capital property, such as real property, used in a business is replaced. In this case, under subsection 44(1) any capital gain arising on the disposition of a qualifying property (referred to in subparagraph 44(1)(e)(iii) as a “former property”) is reduced to the extent that the proceeds of disposition are reinvested in a replacement property. Where only a part of the proceeds is reinvested, a partial rollover is available. Where the proceeds are not received in full, subsection 44(1) also provides for the deduction of a capital gains reserve. Under subsection 44(1.1) the maximum reserve is ten years where the property was “qualified farm property” disposed of by a taxpayer to a child of the taxpayer.

Subsection 44(1.1) is amended to extend this reserve treatment to “qualifying fishing property”. This ensures that, in determining a taxpayer's capital gain from a disposition (to which subsection 73(3.1) of the Act applied) on or after May 2, 2006 of a former property (referred to in subparagraph 44(1)(e)(iii)) that is a fishing property to a child of the taxpayer, the taxpayer will be permitted to claim a reserve over a maximum ten-year period in respect of the proceeds of disposition that have not been received.

This amendment generally applies to dispositions of property that occur on or after May 2, 2006.

Clause 6

Other sources of income

ITA
56

Section 56 of the Act provides a list of certain types of income that are required to be included in computing the income of a taxpayer under paragraph 3(a) of the Act from sources that are not an office or employment, a business or a property.

Eligible tools of an employee, re proceeds

ITA
56(1)(k)

Paragraph 56(1)(k) of the Act provides a rule that applies to all amounts received by a person (vendor) in respect of certain tools if the vendor was entitled to an apprentice mechanics' tools deduction for those tools under paragraph 8(1)(r) of the Act, or the recipient is a person who does not deal at arm's length with the apprentice mechanic (e.g., a spouse or common-law partner, son or daughter).

Paragraph 56(1)(k) is amended consequential to the introduction of a deduction for eligible tools of a tradesperson under new paragraph 8(1)(s).

This amendment applies to the 2006 and subsequent taxation years.

Apprenticeship incentive grant

ITA
56(1)(m)

New paragraph 56(1)(m) of the Act requires a taxpayer to include in computing income for a taxation year amounts received in the year under the Apprenticeship Incentive Grant program administered by the Department of Human Resources and Social Development.

This amendment applies to the 2007 and subsequent taxation years.

Scholarships and bursaries

ITA
56(3)

Subsection 56(3) of the Act provides for an annual exemption for up to \$3,000 of amounts received by an individual in connection with the individual's enrolment at a designated educational institution in a program in respect of which the individual may claim the education tax credit.

Subsection 56(3) is amended to exclude from income all such amounts received by an individual in a taxation year, without limit.

This amendment applies to the 2006 and subsequent taxation years.

CPP/QPP and UCCB amounts for previous years

ITA
56(8)

Subsection 56(8) of the Act allows an individual to exclude from income for the taxation year of receipt certain CPP/QPP disability benefits that relate to one or more prior years (except where the prior year benefits are less than \$300) and to pay tax on those benefits as if they had been received in the years to which they relate.

This amendment broadens the application of subsection 56(8) such that it will also apply to benefits received under the *Universal Child Care Benefit Act*.

This amendment applies to the 2006 and subsequent taxation years.

Clause 7

Deductions in computing income

ITA
60

Section 60 of the Act provides for various deductions in computing income, including deductions in respect of certain repayments.

Repayment of apprenticeship incentive grant

ITA
60(p)

New paragraph 60(p) of the Act provides that a taxpayer may deduct a repayment made under the Apprenticeship Incentive Grant program.

This amendment applies to the 2007 and subsequent taxation years.

Clause 8

Child care expense

ITA
63

Section 63 of the Act provides rules concerning the deductibility of child care expenses in computing a taxpayer's income.

Earned income

ITA
63(3)(b)

Subsection 63(3) of the Act contains the definition "earned income". Paragraph 63(3)(b) of that definition is amended – consequential to the new apprentice grant program – to include in a taxpayer's earned income an apprentice grant included in computing the taxpayer's income under paragraph 56(1)(m) of the Act.

This amendment applies to the 2007 and subsequent taxation years.

Clause 9

Transfer of farm and fishing property to child

ITA
70(9) and (9.01)

Subsection 70(9) of the Act provides rules allowing a rollover of capital gains on intergenerational transfers of farm property from a taxpayer to a child of the taxpayer as a result of the death of the taxpayer.

The Act is amended to split subsection 70(9) into two subsections, namely, new subsections 70(9) and (9.01). Subsection 70(9) identifies the circumstances under which subsection 70(9.01) will apply. Taken together, those subsections allow for a tax deferred rollover of capital gains and recaptured depreciation on an intergenerational transfer of certain farm and fishing properties from a taxpayer to a child of the taxpayer as a result of the death of the taxpayer.

New subsection 70(9) provides that, for a transfer on or after May 2, 2006 of a property, the rollover rules in new subsection 70(9.01) will apply to the deceased taxpayer and the child in respect of the property where

- the property was, immediately before the death of the taxpayer, land or depreciable property of a prescribed class used principally in a farming or fishing business carried on in Canada in which the taxpayer, the taxpayer's spouse or common-law partner, a child of the taxpayer or a parent of the taxpayer was actively engaged on a regular and continuous basis (or in the case of a property used in a woodlot, was engaged to the extent required by the prescribed forest management plan in respect of the woodlot),
- the child was resident in Canada immediately before the taxpayer's death, and
- as a consequence of the death of the taxpayer, the property is transferred to the child of the taxpayer and the property has become vested indefeasibly in the child on any day within the period ending 36 months after the death of the taxpayer or, if written application is made by the taxpayer's legal representative within that period, such longer period that the Minister of National Revenue considers reasonable in the circumstances.

New subsection 70(9.01) provides the following where the requirements in subsection 70(9) are met:

- Section 69 and subsection 70(5) of the Act do not apply to the taxpayer and the child in respect of the property;
- The taxpayer is deemed to have, immediately before death, disposed of the property and to have received proceeds of disposition as determined under paragraph 70(9.01)(a) or (b). The child is deemed to have, immediately after the time of the disposition, acquired the property for an amount equal to the amount of those proceeds of disposition; and
- Paragraph 70(9.01)(b) will apply to the taxpayer in respect of the property if the taxpayer's personal representative elects, in the taxpayer's return of income for the taxation year in which the taxpayer died, to have that paragraph apply. Otherwise, paragraph 70(9.01)(a) will apply to the taxpayer in respect of the property.

If paragraph 70(9.01)(a) applies,

- where the property was a depreciable property of a prescribed class of the taxpayer, the taxpayer is deemed to have, immediately before death, disposed of the property and to have received proceeds of disposition equal to the lesser of
 - the capital cost to the taxpayer of the property, and
 - the amount, determined immediately before the time of the disposition of the property, that is that proportion of the undepreciated capital cost of the property of that class to the taxpayer that the capital cost to the taxpayer of the property is of the capital cost to the taxpayer of all property of that class that had not, at or before that time, been disposed of, and
- where the property is land, the taxpayer is generally deemed to have, immediately before death, disposed of the property and to have received proceeds of disposition equal to the taxpayer's adjusted cost base of the property immediately before the death.
- where the property was depreciable property of a prescribed class, paragraphs 70(5)(c) and (d) apply to the taxpayer and the child in respect of the property as if the references in those paragraphs to "paragraph (a)" and "paragraph (b)" were read as references to "subparagraph (9.01)(a)(ii)" and "subparagraph (9.01)(a)(iii)", respectively.

If paragraph 70(9.01)(b) applies, the proceeds of disposition deemed to have been received by the taxpayer is the amount that the legal representative designates, which designated amount must not be greater than the greater of nor less than the lesser of

- where the property was depreciable property of a prescribed class,
 - the fair market value of the property immediately before the time of the disposition of the property, and
 - the lesser of the capital cost to the taxpayer of the property and the amount, determined immediately before the time of the disposition of the property, that is that proportion of the undepreciated capital cost of the property of that class to the taxpayer that the capital cost to the taxpayer of the property is of the capital cost to the taxpayer of all property of that class that had not, at or before that time, been disposed of, and
- where the property was land, generally
 - the fair market value of the property immediately before the time of the disposition, and
 - the adjusted cost base to the taxpayer of the property immediately before the time of the disposition.
- where the property was depreciable property of a prescribed class, paragraphs 70(5)(c) and (d) apply to the taxpayer and the child in respect of the property as if the references in those paragraphs to “paragraph (a)” and “paragraph (b)” were read as references to “subparagraph (9.01)(b)(ii)” and “subparagraph (9.01)(b)(iii)”, respectively.
- where the amount designated by the taxpayer’s legal representative to be the taxpayer’s proceeds of disposition of a property exceeds the greater of the amounts provided under subsubclauses 70(9)(b)(ii)(B)(I)1. and 2. or subsubclauses 70(9)(b)(ii)(B)(II)1. and 2. in respect of the property, the taxpayer’s proceeds of disposition of the property are deemed to be the greater of the amounts determined under those subsubclauses in respect of the property.
- where the amount designated by the taxpayer’s legal representative to be the taxpayer’s proceeds of disposition of a property is less than the lesser of the amounts provided under subsubclauses 70(9)(b)(ii)(B)(I)1. and 2. or subsubclauses 70(9)(b)(ii)(B)(II)1. and 2. in respect of the property, the taxpayer’s proceeds of disposition of the property are deemed to be the lesser of the amounts determined under those subsubclauses in respect of the property.

This amendment applies to dispositions of property that occur on or after May 2, 2006, unless the disposition of the property was before 2007 and the taxpayer elects in writing in the taxpayer’s return of income for the taxation year in which the disposition occurred to have subsection 70(9), as that subsection read on May 1, 2006, apply to the disposition of the property.

Transfer of farming and fishing property from trust to settlor’s children

ITA
70(9.1) and (9.11)

Subsection 70(9.1) of the Act provides rules allowing a rollover of capital gains on intergenerational transfers of farm property from spousal or common-law partner trust in respect of a taxpayer that is the settlor of the trust to a child of the taxpayer as a result of the death of the taxpayer’s spouse or common-law partner who is the beneficiary under the trust.

The Act is amended to split subsection 70(9.1) into two subsections, namely, new subsections 70(9.1) and (9.11). Subsection 70(9.1) identifies the circumstances under which subsection (9.11) applies. Taken together, those subsections provide rules allowing a tax-deferred transfer on intergenerational transfers of certain fishing and farming properties from spousal or common-law partner trusts to a child of the taxpayer as a consequence of the death of the taxpayer’s spouse or common-law partner.

New subsection 70(9.1) provides that new subsection (9.11) will apply to a trust and the child of the settlor of the trust in respect of a transfer of a property of the trust to a child of the settlor of the trust as a consequence of the death of the beneficiary of the trust who is the spouse or common-law partner of the settlor where

- the property (or property for which the property was substituted) was transferred to the trust by the settlor,
- subsection 70(6) or 73(1) of the Act (as that subsection applied to transfers before 2000) or subparagraph 73(1.01)(c)(i) applied to the settlor and the trust in respect of the transfer of the property to the trust,
- the property was, immediately before the beneficiary's death, land or depreciable property of a prescribed class of the trust that was used in a fishing or farming business carried on in Canada,
- the child of the settlor was, immediately before the beneficiary's death, resident in Canada, and
- as a consequence of the beneficiary's death, the property is transferred to the child and becomes vested indefeasibly in the child within the period ending 36 months after the beneficiary's death or, if written application has been made to the Minister of National Revenue by the taxpayer's legal representative within that period, within any longer period that the Minister considers reasonable in the circumstances.

New subsection 70(9.11) provides the following where the requirements in subsection 70(9.1) are met:

- Section 69 and subsections 104(4) and (5) of the Act do not apply to the taxpayer and the child in respect of the property;
- The trust is deemed to have disposed of the property immediately before the beneficiary's death and to have received proceeds of disposition determined under paragraph 70(9.11)(a) or (b). The child is deemed to have, immediately after the time of the disposition, acquired the property at a cost equal to the trust's proceeds of disposition in respect of the disposition of the property; and
- Paragraph 70(9.11)(b) will apply to the taxpayer in respect of the property if the trust elects, in the trust's return of income for the taxation year in which the beneficiary died, to have that paragraph apply. Otherwise, paragraph 70(9.11)(a) will apply to the trust in respect of the property.

If paragraph 70(9.11)(a) applies,

- where the property was depreciable property of a prescribed class of the trust, the trust is deemed to have disposed of the property for proceeds of disposition equal to the lesser of
 - the capital cost to the trust of the property, and
 - the amount, determined immediately before the time of the disposition of the property, that is that proportion of the undepreciated capital cost of property of that class to the trust that the capital cost to the trust of the property is of the capital cost to the trust of all property of that class that had not, at or before that time, been disposed of, and
- where the property was land of the trust, the trust is generally deemed to have disposed of the property for proceeds of disposition equal to the trust's adjusted cost base of the land immediately before the time of the disposition.

If paragraph 70(9.11)(b) applies, the trust is deemed to have disposed of the property and received proceeds of disposition, in respect of the disposition of the property equal to such amount as the trust designates provided that the amount designated is not greater than the greater of nor less than the lesser of

- where the property was depreciable property of a prescribed class, the lesser of
 - the fair market value of the property immediately before the time of the disposition of the property, and
 - the lesser of the capital cost to the trust of the property and the amount, determined immediately before the time of the disposition of the property, that is that proportion of the undepreciated capital cost of property of that class to the trust that the capital cost to the trust of the property is of the capital cost to the trust of all property of that class that had not, at or before that time, been disposed of, and

- where the property was land, generally
 - the trust's adjusted cost base of the property immediately before the time of the disposition, and
 - the fair market value of the property immediately before the time of the disposition.
- where the amount designated by the trust to be the trust's proceeds of disposition of a property exceeds the greater of the amounts provided under subsubclauses 70(9.11)(b)(ii)(B)(I)1. and 2. or subsubclauses 70(9.11)(b)(ii)(B)(II)1. and 2. in respect of the property, the taxpayer's proceeds of disposition of the property are deemed to be the greater of the amounts determined under those subsubclauses in respect of the property.
- where the amount designated by the trust to be the trust's proceeds of disposition of a property is less than the lesser of the amounts provided under subsubclauses 70(9.11)(b)(ii)(B)(I)1. and 2. or subsubclauses 70(9.11)(b)(ii)(B)(II)1. and 2. in respect of the property, the taxpayer's proceeds of disposition of the property are deemed to be the lesser of the amounts determined under those subsubclauses in respect of the property.
- the child's capital cost of a depreciable property acquired from the trust is deemed to be the capital cost of the property to the trust immediately before the disposition and if that capital cost to the trust of the property exceeds the cost of the property to the child, the excess is deemed to be capital cost allowance allowed to the child for the purposes of sections 13 and 20 of the Act and any regulations made under paragraph 20(1)(a).
- where the trust's proceeds of disposition of a depreciable property are redetermined under subsection 13(21.1) and the trust's capital cost, immediately before the disposition, exceeds the amount so redetermined under subsection 13(21.1), for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a), the child's capital cost of the property immediately after the time of disposition is deemed to be the amount that was the capital cost of the property, to the trust, immediately before the disposition and the excess is deemed to be capital cost allowance allowed to the child.
- where the trust's proceeds of disposition of land are redetermined under subsection 13(21.1), the child's cost of the property is deemed to be the amount that was the trust's proceeds of disposition of the property redetermined under subsection 13(21.1).

This amendment applies to dispositions of property that occur on or after May 2, 2006, unless the disposition of the property was before 2007 and the taxpayer elects in writing in the taxpayer's return of income for the taxation year in which the disposition occurred to have subsection 70(9.1), as that subsection read on May 1, 2006, apply to the disposition of the property.

Transfer of family farm and fishing corporations and partnerships

ITA
70(9.2) and (9.21)

Subsection 70(9.2) of the Act sets out certain rules that apply to the transfer of a share of a family farm corporation or an interest in a family farm partnership on the death of a taxpayer where the transfer is to a child of the taxpayer.

The Act is amended to split subsection 70(9.2) into two subsections, namely, new subsections 70(9.2) and (9.21). Subsection 70(9.2) identifies the circumstances under which subsection 70(9.21) applies. Taken together, those subsections allow the transfer of a share of the capital stock of a family fishing corporation or a family farm corporation or an interest in a family fishing partnership or a family farm partnership, on the death of a taxpayer where the transfer is to a child of the taxpayer.

New subsection 70(9.2) provides that, in the case of a transfer of a share of a family fishing corporation, a share of a family farm corporation, an interest in a family fishing partnership or an interest in a family farm partnership, of a taxpayer, to a child of the taxpayer as a consequence of the death of the taxpayer, new subsection 70(9.21) will apply to the taxpayer and the child in respect of the property if

- the property was, immediately before the taxpayer's death, a share of the capital stock of a family fishing corporation or of a family farm corporation, of the taxpayer, or an interest in a family fishing partnership or in a family farm partnership, of the taxpayer (as those expressions are defined in subsection 70(10));
- the child was resident in Canada immediately before the taxpayer's death; and
- as a consequence of the taxpayer's death, the property is transferred to the child and becomes vested indefeasibly in the child within the period ending 36 months after the taxpayer's death or, if written application has been made to the Minister of National Revenue by the taxpayer's legal representative within that period, within any longer period that the Minister considers reasonable in the circumstances.

New subsection 70(9.21) provides the following where the requirements in subsection 70(9.2) are met:

- Section 69 and paragraphs 70(5)(a) and (b) of the Act do not apply to the taxpayer and the child in respect of the property;
- The taxpayer is deemed to have, immediately before death, disposed of the property and received proceeds of disposition determined under either paragraph 70(9.21)(a) or (b); and
- Paragraph 70(9.21)(b) will apply to the taxpayer in respect of the property if the taxpayer's legal representative elects, in the taxpayer's return of income for the taxation year in which the taxpayer died, to have that paragraph apply. Otherwise, paragraph 70(9.21)(a) will apply to the taxpayer in respect of the property.

If paragraph 70(9.21)(a) applies,

- where the property was, immediately before the taxpayer's death, a share of the capital stock of a family fishing corporation, or a share of the capital stock of a family farm corporation, of the taxpayer,
 - the taxpayer is deemed to have disposed of the property and received proceeds of disposition equal to the taxpayer's adjusted cost base of the property immediately before the taxpayer's death, and
 - the child is, immediately after the time of the disposition, deemed to have acquired the property at a cost equal to the taxpayer's proceeds of disposition, and
- where the property was, immediately before the taxpayer's death, an interest in a family fishing partnership or an interest in a family farm partnership, of the taxpayer,
 - the taxpayer is (except for the purpose of paragraph 98(5)(g) of the Act) deemed not to have disposed of the property as a consequence of the taxpayer's death,
 - the child is deemed to have acquired the property at the time of the taxpayer's death at a cost equal to the cost to the taxpayer of the interest immediately before the time that is immediately before the time of the taxpayer's death, and
 - each amount required to be added or deducted by subsection 53(1) or (2) of the Act in computing the adjusted cost base to the taxpayer of the property shall be deemed to be required by subsection 53(1) or (2) to be added or deducted, as the case may be, in computing the child's adjusted cost base of the property.

If paragraph 70(9.21)(b) applies,

- where the property is, immediately before the taxpayer's death, a share of the capital stock of a family fishing corporation, or a share of the capital stock of a family farm corporation, of the taxpayer,
 - the taxpayer is deemed to receive proceeds of disposition in respect of the disposition of the property equal to such amount as the taxpayer's legal representative designates, provided that the amount designated is not greater than the greater of nor less than the lesser of
 - the property's fair market value immediately before the taxpayer's death, and
 - the adjusted cost base of the property to the taxpayer immediately before the time of that disposition, and
 - the child is, immediately after the time of the disposition, deemed to have acquired the property at a cost equal to the taxpayer's proceeds of disposition, and
- where the amount designated by the taxpayer's representative to be the taxpayer's proceeds of disposition of a property exceeds the greater of the amounts provided under subsubclauses 70(9.21)(b)(ii)(A)(I)1. and 2. in respect of the property, the taxpayer's proceeds of disposition of the property are deemed to be the greater of the amounts determined under those subsubclauses in respect of the property,
- where the amount designated by the taxpayer's representative to be the taxpayer's proceeds of disposition of a property is less than the lesser of the amounts provided under subsubclauses 70(9.21)(b)(ii)(A)(I)1. and 2. in respect of the property, the taxpayer's proceeds of disposition of the property are deemed to be the lesser of the amounts determined under those subsubclauses in respect of the property,
- where the property is, immediately before the taxpayer's death, an interest in a family fishing partnership, or an interest in a family farm partnership, of the taxpayer (other than a partnership interest to which subsection 100(3) of the Act applies),
 - the taxpayer is (except for the purpose of paragraph 98(5)(g)) deemed not to have disposed of the property as a consequence of the taxpayer's death,
 - the child is deemed to have acquired the property at the time of the taxpayer's death at a cost equal to the cost to the taxpayer of the interest immediately before the time that is immediately before the time of the taxpayer's death, and
 - each amount required to be added or deducted by subsection 53(1) or (2) in computing the adjusted cost base to the taxpayer of the property shall be deemed to be required by subsection 53(1) or (2) to be added or deducted, as the case may be, in computing the child's adjusted cost base of the property.

This amendment applies to dispositions of property that occur on or after May 2, 2006, unless the disposition of the property was before 2007 and the taxpayer elects in writing in the taxpayer's return of income for the taxation year in which the disposition occurred to have subsection 70(9.2), as that subsection read on May 1, 2006, apply to the disposition of the property.

Transfer of family farm or fishing corporation or family farm or fishing partnership from trust to children of settlor

ITA
70(9.3) and (9.31)

Subsection 70(9.3) of the Act provides rules allowing a rollover of capital gains on an intergenerational transfer of a share of the capital stock of a family farm corporation or interest in a family farm partnership of a taxpayer that is a settlor of a spousal or a common-law partner trust, where the transfer of that share or interest is from the spousal or common-law partner trust to a child of the taxpayer on the beneficiary's death of the trust that is the spouse or common-law partner of the taxpayer.

The Act is amended to split subsection 70(9.3) into two subsections, namely, new subsections 70(9.3) and 70(9.31). Subsection 70(9.3) identifies the circumstances under which subsection 70(9.31) applies. Taken together, those subsections allow a capital gains rollover in respect of a share of the capital stock of a family fishing corporation or of a family farm corporation of the settlor or an interest in a family fishing partnership or in a family farm partnership of the settlor, from the spousal or common-law partner trust created to a child of the settlor as a consequence of the beneficiary's death of the trust that is the spouse or common-law partner.

New subsection 70(9.3) provides that new subsection 70(9.31) will apply (and subsection 104(4) of the Act will not apply), as a consequence of the death of a beneficiary under the trust who was the spouse or common-law partner of the settlor of the trust, in respect of a property of the trust if,

- the property (or property for which the property was substituted) was transferred to the trust by the settlor, and was, immediately before that transfer, a share of the capital stock of a family farm corporation or a share of the capital stock of a family fishing corporation, of the settlor, an interest in a family farm partnership or an interest in a family fishing partnership, of the settlor,
- subsections 70(6) and 73(1) of the Act (as that subsection applied to transfers before 2000) or subparagraph 73(1.01)(c)(i) applied to the settlor and the trust in respect of that transfer of the property,
- the property was, immediately before the beneficiary's death (i.e., the spouse or common-law partner of the taxpayer),
 - a share of the capital stock of a Canadian corporation that would, immediately before the beneficiary's death, be a share of the capital stock of a family farm corporation of the settlor, if the settlor owned the share at that time and paragraph (a) of the definition "share of the capital stock of a family farm corporation", in subsection 70(10), were read without the words "in which the person or a spouse or common-law partner, child or parent of the person was actively engaged on a regular and continuous basis (or in the case of property used in the operation of a woodlot, was engaged to the extent required by a prescribed forest management plan in respect of that woodlot)",
 - a share of the capital stock of a Canadian corporation that would, immediately before the beneficiary's death, be a share of the capital stock of a family fishing corporation of the settlor, if the settlor owned the share at that time and paragraph (a) of the definition "share of the capital stock of a family fishing corporation", in subsection 70(10), were read without reference to the words "in which the individual, the individual's spouse or common-law partner, or a child or a parent of the individual was actively engaged on a regular and continuous basis", or
 - a partnership interest in a partnership that carried on the business of farming or fishing in Canada in which it used all or substantially all of the property,
- the child of the settlor was, immediately before the beneficiary's death, resident in Canada, and
- as a consequence of the beneficiary's death, the property is transferred to the child and becomes vested indefeasibly in the child within the period ending 36 months after the beneficiary's death or, if written application has been made to the Minister of National Revenue by the taxpayer's legal representative within that period, within any longer period that the Minister considers reasonable in the circumstances.

New subsection 70(9.31) provides the following where the requirements in subsection 70(9.3) are met:

- Section 69 and subsection 104(4) of the Act do not apply to the trust and the child in respect of the property;
- The trust is deemed to have disposed of the property immediately before the beneficiary's death and to have received proceeds of disposition determined under paragraph 70(9.31)(a) or (b); and
- Paragraph 70(9.31)(b) will apply to the taxpayer in respect of the property if the trust elects, in the trust's return of income for the taxation year in which the beneficiary died, to have that paragraph apply. Otherwise, paragraph 70(9.31)(a) will apply to the trust in respect of the property.

If paragraph 70(9.31)(a) applies,

- where the property was a share of the capital stock of a Canadian corporation that would immediately before the beneficiary's death, be a share of the capital stock of a family farm corporation of the settlor under the conditions in subparagraph 70(9.3)(c)(i), or a share of the capital stock of a Canadian corporation that would, immediately before the beneficiary's death, be a share of the capital stock of a family fishing corporation of the settlor, under the conditions in subparagraph 70(9.3)(c)(ii),
 - the trust is deemed to have disposed of the property immediately before the beneficiary's death, and to have received proceeds of disposition equal to the adjusted cost base to the trust of the property immediately before the time of that disposition, and
 - the child is, immediately after the time of the disposition, deemed to have acquired the property at a cost equal to the trust's proceeds of disposition in respect of that disposition, and
- where the property was, immediately before the beneficiary's death, a partnership interest in a partnership that carried on the business of farming or fishing in Canada in which it used all or substantially all of the property (other than a partnership interest in a partnership to which subsection 100(3) of the Act applies),
 - the trust is, (except for the purpose of paragraph 98(5)(g) of the Act) deemed not to have disposed of the property as a consequence of the beneficiary's death,
 - the child is, at the time of the beneficiary's death, deemed to have acquired the property at a cost equal to the cost to the trust of the interest, immediately before that time, and
 - each amount required to be added or deducted by subsection 53(1) or (2) immediately before the beneficiary's death, in computing the adjusted cost base to the trust of the property shall be deemed to be required by subsection 53(1) or (2) to be added or deducted, at or after the time of the beneficiary's death, in computing the child's adjusted cost base of the property.

If paragraph 70(9.31)(b) applies,

- where the property was a share of the capital stock of a Canadian corporation that would immediately before the beneficiary's death, be a share of the capital stock of a family farm corporation of the settlor under the conditions in subparagraph 70(9.3)(c)(i), or a share of the capital stock of a Canadian corporation that would, immediately before the beneficiary's death, be a share of the capital stock of a family fishing corporation of the settlor, under the conditions in subparagraph 70(9.3)(c)(ii), the trust is deemed to have
 - disposed of the property immediately before the beneficiary's death, and
 - received proceeds of disposition that are equal to the amount that the trust designates, provided that the amount designated is not greater than the greater of nor less than the lesser of
 - the fair market value of the property immediately before the beneficiary's death, and
 - the adjusted cost base to the trust of the property immediately before the beneficiary's death,
 - the child is, immediately after the time of the disposition, deemed to have acquired the property at a cost equal to the trust's proceeds of disposition in respect of that disposition of the property, and
- where the amount designated by the trust to be the trust's proceeds of disposition of a property exceeds the greater of the amounts provided under subsubclauses 70(9.31)(b)(ii)(A)(II)1. and 2. in respect of the property, the taxpayer's proceeds of disposition of the property are deemed to be the greater of the amounts determined under those subsubclauses in respect of the property.
- where the amount designated by the trust to be the trust's proceeds of disposition of a property is less than the lesser of the amounts provided under subsubclauses 70(9.31)(b)(ii)(A)(I)1. and 2. in respect of the property, the taxpayer's proceeds of disposition of the property are deemed to be the lesser of the amounts determined under those subsubclauses in respect of the property.

- where the property was, immediately before that beneficiary's death, a partnership interest in a partnership that carried on the business of farming or fishing in Canada in which it used all or substantially all of the property (other than a partnership interest in a partnership to which subsection 100(3) of the Act applies),
- the trust is, (except for the purpose of paragraph 98(5)(g) of the Act) deemed not to have disposed of the property as a consequence of the beneficiary's death,
- the child is, at the time of the beneficiary's death, deemed to have acquired the property at a cost equal to the cost to the trust of the interest, immediately before the time that is immediately before the beneficiary's death, and
- each amount required to be added or deducted by subsection 53(1) or (2), immediately before the beneficiary's death, in computing the adjusted cost base to the trust of the property shall be deemed to be required by subsection 53(1) or (2) to be added or deducted, at or after the time of the beneficiary's death, in computing the child's adjusted cost base of the property.

This amendment applies to dispositions of property that occur on or after May 2, 2006, unless the disposition of the property was before 2007 and the taxpayer elects in writing in the taxpayer's return of income for the taxation year in which the disposition occurred to have subsection 70(9.3), as that subsection read on May 1, 2006, apply to the disposition of the property.

Transfer to a parent

ITA
70(9.6)

Subsection 70(9.6) of the Act provides for a tax-deferred rollover under subsection 70(9) or (9.2) (read with necessary changes) of certain property from a child to a parent where the child dies before the parent. The rules are applicable to farm property in circumstances where the child received the property as a result of the death of a parent or by an *inter vivos* transfer from a parent and any of subsections 70(9), (9.1), (9.2), (9.3) and 73(3) and (4) of the Act applied. The rules provide that such property can be transferred back to either of the child's parents for proceeds of disposition equal to an elected amount that is between the cost to the child of the property and the fair market value of the property at the time of the child's death. The cost to the parent will be equal to the elected amount.

Subsection 70(9.6) is amended to change the references to subsections 70(9), (9.1), (9.2), (9.3) and 73(3) and (4) to references to new subsections 70(9.01), (9.11), (9.21), (9.31) and 73(3.1) and (4.1).

Because of the expanded scope of the new subsections 70(9.1) and (9.21), new subsection 70(9.6) now results in the same treatment being available to fishing property as well.

The amendment to subsection 70(9.6) applies to dispositions of property that occur on or after May 2, 2006.

Leased farm and fishing property

ITA
70(9.8)

Subsection 70(9.8) of the Act treats, for the purposes described in that subsection, property owned by a taxpayer and used by a family farm corporation or a family farm partnership of the taxpayer, his or her spouse or common-law partner, or any of his or her children in the business of farming, as property used by the taxpayer in the business of farming.

Subsection 70(9.8) is amended to provide that, for the purposes of subsections 14(1), paragraph 20(1)(b), subsections 70(9) and 73(3), and paragraph (d) of the definitions "qualified fishing property" and "qualified farm property" in subsection 110.6(1) of the Act, property of an individual is deemed to be used by the individual in the business of fishing or farming, as the case may be, where the property was used in the course of carrying on a business of fishing or farming, as the case may be, in Canada by

- a corporation, a share of the capital stock of which is a share of the capital stock of a family fishing corporation or of a family farm corporation, of the individual, the individual's spouse or common-law partner, any of the individual's children or the individual's parent, or
- a partnership, an interest in which is an interest in a family fishing partnership or in a family farm partnership, of the individual, the individual's spouse or common-law partner, any of the individual's children, or the individual's parent.

The amendment generally applies to dispositions of property that occur on or after May 2, 2006.

Definitions

ITA
70(10)

Subsection 70(10) of the Act sets out a number of definitions that apply in section 70. The definition "interest in a family farm partnership" is amended, and the definitions "interest in a family fishing partnership" and "share of the capital stock of a family fishing corporation" are added to that subsection, applicable to dispositions of property that occur on or after May 2, 2006, unless the disposition of the property was before 2007 and the taxpayer elects in writing in the taxpayer's return of income for the taxation year in which the disposition occurred to have subsection 70(9), (9.1), (9.2) or (9.3), as that subsection read on May 1, 2006, apply to the disposition of the property.

"interest in a family farm partnership"

"Interest in a family farm partnership" of an individual at any time means a partnership interest owned by the individual at that time if, at that time, all or substantially all of the fair market value of the property of the partnership was attributable to

- property that, at that time, was being used, principally in the course of carrying on a farming business in Canada by a qualifying entity in respect of the individual, in which the individual, the individual's spouse or common-law partner, a child of the individual, or a parent of the individual was actively engaged on a regular and continuous basis (or, in the case of property used in the operation of a woodlot, was engaged to the extent required by a prescribed forest management plan in respect of that woodlot),
- shares of the capital stock or indebtedness of one or more corporations all or substantially all of the fair market value of the property of which was attributable to property described in (d),
- partnership interests or indebtedness of one or more partnerships all or substantially all of the fair market value of the property of which was attributable to property described in (d), and
- properties described in any of (a) to (c).

For this purpose, a qualifying entity in respect of the individual is the partnership, a corporation (a share of the capital stock of which was a share of the capital stock of a family farm corporation of the individual or of a spouse or common-law partner, child or parent of the individual), another partnership (a partnership interest which is an interest in a family farm partnership of the individual or of a spouse or common-law partner, child or parent of the individual), and the individual, the individual's spouse or common-law partner, child or parent.

"interest in a family fishing partnership"

"Interest in a family fishing partnership" of an individual is defined to mean a partnership interest owned by the individual where all or substantially all of the fair market value of the property of the partnership is attributable to

- property that has been used principally in the course of carrying on a fishing business in Canada by a qualifying entity in respect of the individual, in which the individual, the individual's spouse or common-law partner, the individual's child, or the individual's parent was actively engaged on a regular and continuous basis,

- (b) shares of the capital stock or indebtedness of one or more corporations all or substantially all of the fair market value of the property of which was attributable to property described in (d),
- (c) partnership interests or indebtedness of one or more partnerships all or substantially all of the fair market value of the property of which was attributable to property described in (d), and
- (d) properties described in any of (a) to (c).

For this purpose, a qualifying entity in respect of an individual is the partnership, a corporation (a share of the capital stock of which was a share of the capital stock of a family fishing corporation of the individual or of a spouse or common-law partner, child or parent of the individual), another partnership (a partnership interest which is an interest in a family fishing partnership of the individual or of a spouse or common-law partner, child or parent of the individual), and the individual, the individual's spouse or common-law partner, child or parent.

“share of the capital stock of a family fishing corporation”

“Share of the capital stock of a family fishing corporation” of an individual is defined to mean a share of the capital stock of a corporation owned by the individual where all or substantially all of the fair market value of the property owned by the corporation was attributable to

- (a) property that has been used principally in the course of carrying on a fishing business in Canada by a qualifying entity in respect of the individual in which the individual or a spouse or common-law partner, child or parent of the individual was actively engaged on a regular and continuous basis,
- (b) shares of the capital stock or indebtedness of one or more corporations all or substantially all of the fair market value of the property of which was attributable to property described in (d),
- (c) partnership interests or indebtedness of one or more partnerships all or substantially all of the fair market value of the property of which was attributable to property described in (d), and
- (d) properties described in any of (a) to (c).

For this purposes, a qualifying entity in respect of an individual is the individual, a spouse or common-law partner, child or parent of the individual, a partnership (an interest in which was an interest in a family fishing partnership of the individual or of a spouse or common-law partner, child or parent of the individual), a corporation or any other corporation (a share of the capital stock of which was a share of the capital stock of a family fishing corporation of the individual or of a spouse or common-law partner, child or parent of the individual) or another corporation controlled by that corporation.

Clause 10

***Inter vivos* transfer of farm property to child**

ITA
73(3)

Subsection 73(3) of the Act provides a tax-deferral for an *inter vivos* transfer of farm property by a taxpayer to a child of the taxpayer.

For dispositions made after December 20, 2002, paragraph 73(3)(c) is amended to clarify that subsection 73(3) does not apply if the anti-avoidance rule in subsection 69(11) of the Act applies. When applicable, subsection 69(11) denies the benefit of the rollover by treating the vendor's proceeds of disposition to be equal to the fair market value of the transferred property notwithstanding any other provision of the Act.

***Inter vivos* transfer of farm or fishing property to child**

ITA

73(3) and (3.1)

New subsections 73(3) and (3.1) of the Act replace existing subsection 73(3) and provide a tax deferred rollover for capital gains and recaptured depreciation on *inter vivos* transfers of certain farm or fishing property, of a taxpayer, by the taxpayer to a child of the taxpayer.

New subsection 73(3) provides that a tax-deferral for an *inter vivos* transfer of certain fishing or farm property by a taxpayer to a child of the taxpayer is available under new subsection 73(3.1), where

- the property transferred was, immediately before the transfer, land, depreciable property of a prescribed class, or any eligible capital property in respect of a fishing or farming business carried on in Canada by the taxpayer,
- the child was, immediately before the transfer, resident in Canada, and
- the property was, immediately before the transfer, used principally in a fishing or a farming business in which the taxpayer, the taxpayer's spouse or common-law partner, a child of the taxpayer, or parent of the taxpayer was actively engaged on a regular and continuous basis.

New subsection 73(3.1) provides the following:

- subsection 69(1) of the Act does not apply to the taxpayer and child in respect of the transfer of the property;
- where the property transferred was depreciable property of a prescribed class:
 - the taxpayer is deemed to have disposed of the property for proceeds of disposition equal to
 - if the proceeds of disposition otherwise determined exceeded the greater of the following two amounts, the greater of the following two amounts:
 - the fair market value of the property immediately before the time of the transfer, and
 - the lesser of,
 - the capital cost to the taxpayer of the property, and
 - the amount, determined immediately before the time of the disposition of the property, that is that proportion of the undepreciated capital cost of property of that class to the taxpayer that the capital cost to the taxpayer of the property is of the capital cost to the taxpayer of all property of that class that had not, at or before that time, been disposed of, or
 - if the proceeds of disposition otherwise determined were less than the lesser of those two amounts, the lesser of those two amounts, or
 - in any other case, the proceeds of disposition otherwise determined;
 - the child of the taxpayer is deemed to have acquired the depreciable property for an amount equal to the deemed proceeds of disposition to the taxpayer,
 - the capital cost to the child of the depreciable property is – for the purposes of sections 13 and 20 of the Act and any regulations made under paragraph 20(1)(a) of the Act – deemed to be the amount that was the capital cost of the depreciable property to the taxpayer and the amount, if any, by which capital cost to the taxpayer of the depreciable property exceeds the taxpayer's deemed proceeds of disposition of the depreciable property, is deemed to have been allowed to the child in respect of the depreciable property under the regulations made under paragraph 20(1)(a) in computing income for taxation years before the acquisition;

- where the property transferred was land,
 - the taxpayer is deemed to have disposed of the property for proceeds of disposition equal to
 - if the proceeds of disposition otherwise determined exceeded the greater of the following two amounts, the greater of the following two amounts:
 - the fair market value of the land immediately before the time of the transfer, and
 - the adjusted cost base to the taxpayer of the land immediately before the time of the transfer.
 - if the proceeds of disposition otherwise determined were less than the lesser of those two amounts, the lesser of those two amounts, or
 - in any other case, the proceeds of disposition otherwise determined;
 - the child of the taxpayer is deemed to have acquired the land for an amount equal to the deemed proceeds of disposition of the taxpayer determined in respect of the land;
- where the property transferred was eligible capital property, the taxpayer is deemed to have disposed of the property for proceeds of disposition equal to
 - if the proceeds of disposition otherwise determined exceeded the greater of the following two amounts, the greater of the following two amounts:
 - the fair market value of the property immediately before the time of the transfer, and
 - the amount determined by the formula

$$4/3 \times (A \times B/C)$$

where

A is the taxpayer's cumulative eligible capital in respect of the business,

B is the fair market value of the property immediately before the transfer, and

C is the fair market value immediately before that time of all eligible capital property of the taxpayer in respect of the business,

- if the proceeds of disposition otherwise determined were less than the lesser of those two amounts, the lesser of those two amounts, or
- in any other case, the proceeds of disposition otherwise determined.
- where the child does not continue to carry on the business, the child is deemed to have acquired a capital property, immediately after the transfer, at a cost equal to the deemed proceeds of disposition of the taxpayer in respect of the property,
- where the child continues to carry on the business, the child is deemed to have acquired an eligible capital property and to have made an eligible capital expenditure at a cost equal to the total of
 - that amount of the deemed proceeds of disposition of the taxpayer in respect of the property, and
 - $4/3$ of the amount determined by the formula

$$(A \times B/C) - D$$

where

A is the amount, if any, determined for F in the definition "cumulative eligible capital" in subsection 14(5) of the Act in respect of the business of the taxpayer immediately before the time of the transfer,

B is the fair market value of the eligible capital property immediately before that time,

- C is the fair market value immediately before that time of all eligible capital property of the taxpayer in respect of the business, and
- D is the amount, if any, included under paragraph 14(1)(a) in computing the income of the taxpayer as a result of the disposition of the eligible capital property, and

- for the purpose of determining at any subsequent time the child's cumulative eligible capital in respect of the business, an amount equal to $\frac{3}{4}$ of the amount determined by the above formula is to be added to the amount otherwise determined in respect thereof for element P in the definition "cumulative eligible capital" in subsection 14(5),
- in determining the amount deemed to be the child's taxable capital gain, and the amount to be included in computing the child's income, in respect of any disposition of property by the business, after the transfer, there shall be added to the amount otherwise determined for Q in respect of the business in the definition "cumulative eligible capital" in subsection 14(5), the amount determined by the formula

$$A \times B/C$$

where

- A is the amount, if any, determined for element Q in that definition in respect of the business of the taxpayer immediately before the time of the transfer,
- B is the fair market value, immediately before that time, of the property transferred, and
- C is the fair market value, immediately before that time, of all eligible capital property of the taxpayer in respect of the business.

New subsections 73(3) and (3.1) generally apply to dispositions of property that occur on or after May 2, 2006.

Inter vivos transfer of family farm corporations and partnerships

ITA

73(4)

Subsection 73(4) of the Act provides a tax-deferral for an *inter vivos* transfer of shares of a family farm corporation or an interest in a family farm partnership by a taxpayer to a child of the taxpayer.

For dispositions made after December 20, 2002, paragraph 73(4)(b) is amended to clarify that subsection 73(4) does not apply if the anti-avoidance rule in subsection 69(11) of the Act applies. When applicable, subsection 69(11) denies the benefit of the rollover by treating the vendor's proceeds of disposition to be equal to the fair market value of the transferred property notwithstanding any other provision of the Act.

Inter vivos transfer of family farm or fishing corporations and partnerships

ITA

73(4) and (4.1)

New subsections 73(4) and (4.1) of the Act replace existing subsection 73(4) and provide a capital gains rollover for *inter vivos* transfers made by a taxpayer to a child of the taxpayer of shares of the capital stock of a family farm corporation, shares of the capital stock of a family fishing corporation, interests in a family farm partnership or interests in a family fishing partnership, of the taxpayer.

New subsection 73(4) provides that new subsection 73(4.1) will apply to a taxpayer and a child of the taxpayer in respect of property that has been transferred, at any time, to the child where

- the child was resident in Canada immediately before the transfer, and
- the property was, immediately before the transfer, a share of the capital stock of a family farm corporation of the taxpayer, a share of the capital stock of a family fishing corporation of the taxpayer, an interest in a family farm partnership of the taxpayer, or an interest in a family fishing partnership of the taxpayer (within the meaning assigned by subsection 70(10) of the Act).

New subsection 73(4.1) provides that:

- subsection 69(1) of the Act does not apply to the taxpayer and child in respect of the transfer of the property, and
- the taxpayer is deemed to have disposed of the property for proceeds of disposition equal to
 - if the proceeds of disposition otherwise determined exceed the greater of the following two amounts, the greater of the following two amounts:
 - the fair market value of the property immediately before the time of the transfer, and
 - the adjusted cost base to the taxpayer of the property immediately before the time of the transfer,
 - if the proceeds of disposition otherwise determined were less than the lesser of those two amounts, the lesser of those two amounts, or
 - in any other case, the proceeds of disposition of the taxpayer otherwise determined in respect of the property.
- where the property was, immediately before the transfer, a share of the capital stock of a family farm corporation or of a family fishing corporation, of the taxpayer, the child of the taxpayer is deemed to have acquired the property for an amount equal to the deemed proceeds of disposition of the taxpayer.
- where the property was, immediately before the transfer, an interest in a family farm partnership or an interest in a family fishing partnership:
 - the taxpayer is deemed not to have disposed of the property at the time of the transfer (except for the purposes of paragraph 98(5)(g) of the Act),
 - the child is deemed to have acquired the property at the time of the transfer at a cost equal to the cost to the taxpayer of the interest immediately before the transfer, and
 - each amount required to be added or deducted by subsection 53(1) or (2) of the Act in computing the adjusted cost base to the taxpayer, immediately before the transfer, of the property is deemed to be an amount required by subsection 53(1) or (2) to be added or deducted in computing, at any time at or after the time of the transfer, the adjusted cost base to the child of the property.

The rules would not apply where the rules in subsection 100(3) of the Act dealing with a transfer of a partnership interest on death apply.

New subsections 73(4) and (4.1) generally apply to dispositions of property that occur on or after May 2, 2006.

Clause 11**Acquisition of certain tools – capital cost and deemed depreciation**

ITA

85(5.1)

Subsection 85(5.1) of the Act provides special rules that apply to a transferee corporation that acquires tools in respect of which a deduction was claimed by an apprentice mechanic under paragraph 8(1)(r) of the Act. In general, and consequential to new paragraph 8(1)(s), subsection 85(5.1) is amended to apply to a transferee corporation that acquires tools in respect of which a deduction was claimed by a tradesperson under paragraph 8(1)(s).

This amendment applies to the 2006 and subsequent taxation years.

Clause 12**Acquisition of certain tools – capital cost and deemed depreciation**

ITA

97(5)

Subsection 97(5) of the Act provides special rules that apply to a transferee partnership that acquires tools in respect of which a deduction was claimed by an apprentice mechanic under paragraph 8(1)(r) of the Act. In general, and consequential to new paragraph 8(1)(s), subsection 97(5) is amended to apply to a partnership that acquires tools in respect of which a deduction was claimed by a tradesperson under paragraph 8(1)(s).

This amendment applies to the 2006 and subsequent taxation years.

Clause 13**Beneficiary's taxable capital gain**

ITA

104(21.2)(b)

Subsection 104(21.2) of the Act sets out the rules for allocating the net taxable capital gains of a personal trust to its beneficiaries for the purpose of section 110.6 of the Act.

Paragraph 104(21.2)(b) is amended to permit a trust to allocate to its beneficiaries, for the purposes of the lifetime capital gains exemption, its net taxable capital gains from the disposition of “qualified fishing property” (within the meaning assigned by subsection 110.6(1)) of the trust.

The amendment applies to dispositions of eligible property that occur on or after May 2, 2006.

Clause 14**Definitions**

ITA

108(1)

Subsection 108(1) of the Act sets out certain definitions and rules that apply for the purposes of subdivision k. This subdivision deals with the taxation of trusts and their beneficiaries. The definition “qualified fishing property” is being added to this subsection.

“Qualified fishing property” of an individual is defined as having the meaning assigned by subsection 110.6(1) of the Act.

Clause 15

Definitions

ITA

110.6(1)

Subsection 110.6(1) of the Act sets out a number of definitions for the purposes of section 110.6 of the Act. That section provides the rules for the capital gains exemption.

The definitions “annual gains limit”, “interest in a family farm partnership”, “qualified farm property”, and “share of the capital stock of a family farm corporation” are being amended.

As well, the definitions, “interest in a family fishing partnership”, “qualified fishing property” and “share of the capital stock of a family fishing corporation” are being added to this subsection.

Except where specifically noted below, these newly added or amended definitions apply to taxation years that end on or after May 2, 2006.

“share of the capital stock of a family farm corporation”

This definition is amended twice.

Firstly for dispositions of property that occur after 2001 and before May 2, 2006, subparagraph (a)(i) of the definition “share of the capital stock of a family farm corporation” in subsection 110.6(1) is amended to permit a corporation that is related to a particular family farm corporation to qualify as an eligible user of the property of the family farm corporation where shares of the related corporation, that are owned by the persons referred to in clauses (a)(i)(B) to (D) of the definition in respect of the particular family farm corporation, are shares of the capital stock of a family farm corporation of those persons.

Secondly, for dispositions of property that occur on or after May 2, 2006, “Share of the capital stock of a family farm corporation” of an individual (other than a trust that is not a personal trust) means a share of the capital stock of a corporation owned by the individual if two conditions are met.

The first condition is that, throughout any 24-month period ending before the time of disposition of the share by the individual, more than 50% of the fair market value of the property owned by the corporation was attributable to

- (a) property that was used principally in the course of carrying on the business of farming in Canada where the business is carried on by a qualified entity in respect of the individual and the business is one in which at least one of the following persons was actively engaged on a regular and continuous basis:
 - the individual,
 - where the individual is a personal trust, a beneficiary of that trust, or
 - a spouse or common-law partner, child or parent of the individual or of that beneficiary,
- (b) shares or any indebtedness of one or more corporations all or substantially all of the fair market value of the property of which is attributable to properties described in (d),
- (c) a partnership interest in or indebtedness of one or more partnerships all or substantially all of the fair market value of the property of which is attributable to properties described in (d), or
- (d) properties described in (a) or (b).

For this purpose, a qualifying entity in respect of an individual is

- the individual,
- the corporation,
- where the individual is a personal trust, a beneficiary of the trust,

- a spouse or common-law partner, child or parent of the individual or of the beneficiary of that personal trust,
- another corporation that is related to the corporation and of which, a share of the capital stock was a share of the capital stock of a family farm corporation of the individual, of a beneficiary of the personal trust (where the individual is a personal trust) or of a spouse or common-law partner, child or parent of the individual or of such a beneficiary, or
- a partnership, an interest in which was an interest in a family farm partnership of the individual, of a beneficiary of the personal trust (where the individual is a personal trust) or of a spouse or common-law partner, child or parent of the individual or of such a beneficiary.

The second condition is that, at that time, all or substantially all of the fair market value of the property of the partnership was attributable to property described in (d) above.

An individual's share of the capital stock of a family farm corporation constitutes a qualified farm property of that individual and, as such, capital gains realized on the disposition of that share are eligible for the capital gains deduction provided under new subsection 110.6(2.2) of the Act.

“annual gains limit”

“Annual gains limit” of an individual for a taxation year is relevant in determining the individual's entitlement to the capital gains exemption for that year.

Paragraph (b) of the description of A in the formula used in the definition “annual gains limit” excludes gains and losses other than those arising on dispositions after 1984 of qualified farm properties and dispositions after June 17, 1987 of qualified small business corporation shares. That paragraph is amended to include gains and losses arising on dispositions of qualified fishing properties disposed of on or after May 2, 2006.

This amendment applies to dispositions of property that occur on or after May 2, 2006.

“interest in a family farm partnership”

“Interest in a family farm partnership” of an individual (other than a trust that is not a personal trust) means a partnership interest owned by the individual in a partnership if two conditions are met.

The first condition is that, throughout any 24-month period before the disposition of the property, more than 50% of the fair market value of the property of the partnership was attributable to

- (a) property that was used principally in the course of carrying on the business of farming in Canada where the business is carried on by a qualified entity in respect of the individual and the business is one in which at least one of the following persons was actively engaged on a regular and continuous basis:
 - the individual,
 - where the individual is a personal trust, a beneficiary of that trust, or
 - a spouse or common-law partner, child or parent of the individual or of that beneficiary,
- (b) shares or any indebtedness of one or more corporations all or substantially all of the fair market value of the property of which is attributable to properties described in (d),
- (c) a partnership interest in or indebtedness of one or more partnerships all or substantially all of the fair market value of the property of which is attributable to properties described in (d), or
- (d) properties described in either (a) or (b).

For this purpose, a qualifying entity in respect of an individual is

- the individual,
- the partnership,

- where the individual is a personal trust, a beneficiary of the trust,
- a spouse or common-law partner, child or parent of the individual or of the beneficiary of that personal trust,
- a corporation, a share of the capital stock of which was a share of the capital stock of a family farm corporation of the individual, a beneficiary of the personal trust (where the individual is a personal trust), or a spouse or common-law partner, child or parent of the individual or of a beneficiary of that trust, or
- a partnership, a partnership interest of which was an interest in a family farm partnership of the individual, of a beneficiary of the personal trust (where the individual is a personal trust), or of a spouse or common-law partner, child or parent of the individual or of a beneficiary of that trust.

The second condition is that, at that time, all or substantially all of the fair market value of the property of the partnership was attributable to property described in (d) above.

An individual's "interest in a family farm partnership" constitutes qualified farm property of that individual and, as such, capital gains realized on the disposition of that interest will be eligible for the capital gains deduction under subsection 110.6(2).

"qualified farm property"

"Qualified farm property" of an individual (other than a trust that is not a personal trust) means a property owned by the individual, the spouse or common-law partner of the individual or a partnership, an interest in which is an interest in a family farm partnership of the individual or the individual's spouse or common-law partner that is

- real property that was used principally in the course of carrying on the business of farming by a qualified entity in respect of the individual,
- a share of the capital stock of a family farm corporation of the individual or the individual's spouse or common-law partner,
- an interest in a family farm partnership of the individual or the individual's spouse or common-law partner, or
- an eligible capital property used by a qualified entity in respect of the individual (or by a personal trust from which the individual acquired the property) in the course of carrying on the business of farming in Canada.

For this purpose, a qualified entity in respect of an individual is

- (a) the individual,
- (b) where the individual is a personal trust, a beneficiary of the trust that is entitled to receive directly from the trust any income or capital of the trust,
- (c) a spouse or common-law partner, child or parent of the individual,
- (d) a corporation, a share of the capital stock of which is a share of the capital stock of a family farm corporation of an individual referred to in any of (a) to (c), or
- (e) a partnership, an interest in which is an interest in a family farm partnership of the individual, of a beneficiary of the trust that is entitled to receive directly from the trust any income or capital of the trust (where the individual is a personal trust), or of a spouse or common-law partner, child or parent of the individual or of the beneficiary.

“interest in a family fishing partnership”

“Interest in a family fishing partnership” of an individual (other than a trust that is not a personal trust) means a partnership interest owned by the individual in a partnership if two conditions are met.

The first condition is that, throughout any 24-month period before the disposition of the property, more than 50% of the fair market value of the property of the partnership was attributable to

- (a) property that was used principally in the course of carrying on the business of fishing in Canada where the business is carried on by a qualified entity in respect of the individual and the business is one in which at least one of the following persons was actively engaged on a regular and continuous basis:
 - the individual,
 - where the individual is a personal trust, a beneficiary of that trust, or
 - a spouse or common-law partner, child or parent of the individual or of that beneficiary,
- (b) shares or any indebtedness of one or more corporations all or substantially all of the fair market value of the property of which is attributable to properties described in (d),
- (c) a partnership interest in or indebtedness of one or more partnerships all or substantially all of the fair market value of the property of which is attributable to properties described in (d), or
- (d) properties described in (a) or (b).

For this purpose, a qualifying entity in respect of an individual is

- the individual,
- the partnership,
- where the individual is a personal trust, a beneficiary of the trust,
- a spouse or common-law partner, child or parent of the individual or of the beneficiary of that personal trust,
- a corporation, a share of the capital stock of which was a share of the capital stock of a family fishing corporation of the individual, of a beneficiary of the personal trust (where the individual is a personal trust), or of a spouse or common-law partner, child or parent of the individual or of a beneficiary of that trust, or
- a partnership, a partnership interest of which was an interest in a family fishing partnership of the individual, of a beneficiary of the personal trust (where the individual is a personal trust), or of a spouse or common-law partner, child or parent of the individual or of a beneficiary of that trust.

The second condition is that, at that time, all or substantially all of the fair market value of the property of the partnership was attributable to property described in (d) above.

An individual’s “interest in a family fishing partnership” constitutes qualified fishing property of that individual and, as such, capital gains realized on the disposition of that interest will be eligible for the capital gains deduction provided under new subsection 110.6(2.2) of the Act.

“qualified fishing property”

“Qualified fishing property” of an individual (other than a trust that is not a personal trust) means a property owned by the individual, the spouse or common-law partner of the individual or a partnership, an interest in which is an interest in a family fishing partnership of the individual or the individual’s spouse or common-law partner that is

- real property or a fishing vessel that was used principally in the course of carrying on the business of fishing by a qualified entity in respect of the individual,
- a share of the capital stock of a family fishing corporation of the individual or the individual’s spouse or common-law partner,
- an interest in a family fishing partnership of the individual or the individual’s spouse or common-law partner, or
- an eligible capital property used by a qualified entity in respect of the individual (or by a personal trust from which the individual acquired the property) in the course of carrying on the business of fishing in Canada.

For this purpose, a qualified entity in respect of an individual means

- (a) the individual,
- (b) where the individual is a personal trust, a beneficiary of the trust that is entitled to receive directly from the trust any income or capital of the trust,
- (c) a spouse or common-law partner, child or parent of the individual,
- (d) a corporation, a share of the capital stock of which is a share of the capital stock of a family fishing corporation of an individual referred to in any of (a) to (c), or
- (e) a partnership, an interest in which is an interest in a family fishing partnership of an individual referred to in any of (a) to (c).

“share of the capital stock of a family fishing corporation”

“Share of the capital stock of a family fishing corporation” of an individual (other than a trust that is not a personal trust) means a share of the capital stock of a corporation owned by the individual if two conditions are met.

The first condition is that, throughout any 24-month period ending before the time of disposition of the share by the individual, more than 50% of the fair market value of the property owned by the corporation was attributable to

- (a) property that was used principally in the course of carrying on the business of fishing in Canada where the business is carried on by a qualified entity in respect of the individual and the business is one in which at least one of the following persons was actively engaged on a regular and continuous basis;
 - the individual,
 - where the individual is a personal trust, a beneficiary of that trust, or
 - a spouse or common-law partner, child or parent of the individual or of that beneficiary,
- (b) shares or any indebtedness of one or more corporations all or substantially all of the fair market value of the property of which is attributable to properties described in (d),
- (c) a partnership interest in or indebtedness of one or more partnerships all or substantially all of the fair market value of the property of which is attributable to properties described in (d), or
- (d) properties described in (a) or (b).

For this purpose, a qualifying entity means

- the individual,
- the corporation,
- where the individual is a personal trust, a beneficiary of the trust,
- a spouse or common-law partner, child or parent of the individual or of the beneficiary of that personal trust,
- another corporation that is related to the corporation and of which, a share of the capital stock was a share of the capital stock of a family fishing corporation of the individual, of a beneficiary of the personal trust (where the individual is a personal trust) or of a spouse or common-law partner, child or parent of the individual or of such a beneficiary, or
- a partnership, an interest in which was an interest in a family fishing partnership of the individual, of a beneficiary of the personal trust (where the individual is a personal trust) or of a spouse or common-law partner, child or parent of the individual or of such a beneficiary.

The second condition is that, at that time, all or substantially all of the fair market value of the property of the corporation was attributable to property described (d) above.

An individual's share of the capital stock of a family fishing corporation constitutes a qualified fishing property of that individual and, as such, capital gains realized on the disposition of that share will be eligible for the capital gains deduction provided under new subsection 110.6(2.2) of the Act.

Property used in a fishing business

ITA

110.6(1.2)

New subsection 110.6(1.2) of the Act is added to provide that, for the purposes of the new definition "qualifying fishing property" in subsection 110.6(1) of an individual, at any time, a property owned by the individual, the spouse or common-law partner of the individual, or a partnership, an interest in which is an interest in a family fishing partnership of the individual or of the individual's spouse or common-law partner, will not be considered to have been property used in the course of carrying on the business of fishing in Canada unless two conditions are met.

The first condition is that, throughout the period of at least 24 months immediately preceding that time, the property or property for which the property was substituted ("the property") was owned by one or more specified entities.

The second condition is that either

- in at least 2 years while the property was owned by one or more persons who are specified entities,
 - the property was principally used in a fishing business carried on in Canada in which an individual who is a specified entity was actively engaged on a regular and continuous basis, and
 - the gross revenue of a person who is a specified entity from such a fishing business for the period during which that person was the owner exceeded the income of that person from all other sources for that period, or
- throughout a period of at least 24 months while the property was owned by one or more persons or partnerships that are specified entities, the property was used, by
 - the partnership that is a specified entity, or
 - a corporation a share of the capital stock of which is a share of a family fishing corporation of any individual who is a specified entity in a fishing business in which an individual who is a specified entity was actively engaged on a regular and continuous basis.

For this purpose, a specified entity means

- the individual, or a spouse or common-law partner, child or parent of the individual,
- a partnership, an interest in which is an interest in a family fishing partnership of the individual or of the individual's spouse or common-law partner,
- where the individual is a personal trust, the individual from whom the trust acquired the property or a spouse or common-law partner, child or parent of that individual, or
- a personal trust from which the individual or a child or parent of the individual acquired the property.

New subsection 110.6(1.2) generally applies to dispositions of property that occur on or after May 2, 2006.

Property used in a farming business

ITA

110.6(1.3)

New subsection 110.6(1.3) of the Act is added to provide that, for the purposes of amended definition "qualified farm property" in subsection 110.6(1) of an individual, at any time, a property owned by the individual, the spouse or common-law partner of the individual, or a partnership, an interest in which is an interest in a family farm partnership of the individual or of the individual's spouse or common-law partner, will not be considered property to have been used in the course of carrying on the business of farming in Canada unless two conditions are met.

The first condition is that, throughout the period of at least 24 months immediately preceding that time, the property or property for which the property was substituted ("the property") was owned by one or more specified entities.

Subject to new paragraph 110.6(1.3)(c) discussed below, the second condition is that either

- in at least 2 years while the property was owned by one or more persons who are specified entities,
 - the property was principally used in a farming business carried on in Canada in which an individual who is a specified entity was actively engaged on a regular and continuous basis, and
 - the gross revenue of a person who is a specified entity from such a farming business for the period during which that person was the owner exceeded the income of that person from all other sources for that period, or
- throughout a period of at least 24 months while the property was owned by one or more persons or partnerships that are specified entities, the property was used, by
 - the partnership that is a specified entity, or
 - a corporation a share of the capital stock of which is a share of a family farm corporation of any individual who is a specified entity in a farming business in which an individual who is a specified entity was actively engaged on a regular and continuous basis.

For this purpose, a specified entity means

- the individual, or a spouse or common-law partner, child or parent of the individual,
- a partnership, an interest in which is an interest in a family farming partnership of the individual or of the individual's spouse or common-law partner,
- where the individual is a personal trust, the individual from whom the trust acquired the property or a spouse or common-law partner, child or parent of that individual, or
- a personal trust from which the individual or a child or parent of the individual acquired the property.

New paragraph 110.6(1.3)(c) provides for a modified version of the second condition that applies in circumstances where the property or property for which the property was substituted was last acquired by the individual or partnership before June 18, 1987 (or after June 17, 1987 under an agreement in writing entered into before that date). This provision reflects the conditions that were in subparagraph (a)(vii) of the definition “qualified farm property” in subsection 110.6(1) (read without reference to these proposals).

New subsection 110.6(1.3) generally applies to dispositions of property that occur on or after May 2, 2006.

Capital gains deduction – qualified farm property

ITA

110.6(2)(a)

Under paragraph 110.6(2)(a) of the Act, each individual taxpayer is entitled to an exemption from tax on up to \$250,000 of net taxable capital gains (\$500,000 of capital gains) on certain eligible properties during his or her lifetime. The amount of the exemption has varied over the years to reflect changes in the inclusion rate in determining taxable capital gains. Transitional rules are provided to adjust for exemptions claimed in previous years to ensure that the remaining lifetime exemption always reflects the inclusion rate in effect for a particular taxation year. The descriptions of A to E in the formula in that paragraph effectively provide for these adjustments in respect of qualified farm property and qualified small business corporation shares.

The description of A in the formula is amended to provide, for greater certainty, that, when computing deductions from the \$250,000 capital gains exemption, that description will also ensure that deductions are made in respect of amounts that had been deducted under section 110.6 in computing the individual’s taxable income for a preceding taxation year that ended after October 17, 2000.

This amendment applies to preceding taxation years that end after October 17, 2000.

Capital gains deduction – qualified farm property

ITA

110.6(2)(d)

Subsection 110.6(2) of the Act provides for an individual’s capital gains deduction for a taxation year in respect of qualified farm property. Paragraph 110.6(2)(d) provides that that deduction cannot exceed the amount that would be determined in respect of the individual for the year under paragraph 3(b) of the Act in respect of capital gains and capital losses if the only properties referred to in paragraph 3(b) were qualified farm properties disposed of after 1984. This limiting factor is necessary because both the “cumulative gains limit” and the “annual gains limit” include net taxable capital gains from the disposition of qualified small business corporation shares. Paragraph 110.6(2)(d) ensures that only net taxable capital gains from the disposition of qualified farm properties qualify for the full lifetime exemption limit under subsection 110.6(2).

As the definition “qualified small business corporation shares” has application only after June 17, 1987, paragraph 110.6(2)(d) is amended so that, for the purposes of applying subsection 110.6(2), the amount that would be determined for the taxation year in respect of the individual’s properties under paragraph 3(b) in respect of capital gains and capital losses would only take into account dispositions of qualified farm properties that occur after June 17, 1987.

This amendment applies to taxation years that end on or after May 2, 2006.

Capital gains deduction – qualified small business shares

ITA

110.6(2.1)(d)

Subsection 110.6(2.1) of the Act provides for an individual's capital gains deduction for a taxation year in respect of qualified small business corporation shares. Paragraph 110.6(2.1)(d) provides that that deduction cannot exceed the amount that would be determined in respect of the individual for the year under paragraph 3(b) of the Act in respect of capital gains and capital losses if the only properties referred to in that paragraph were qualified small business corporation shares disposed of after June 17, 1987. However, paragraph 110.6(2.1)(d) provides that, in making that determining under paragraph 3(b), there shall not be included those amounts already included in the amount determined under paragraph (3)(b) for the purposes of paragraph 110.6(2)(d) in respect of the individual. This prevents potential double counting in cases where the qualified small business corporation shares are also qualified farm property.

Paragraph 110.6(2.1)(d) is amended consequential to the introduction of new subsection 110.6(2.2). New subsection 110.6(2.2) provides a deduction in computing the taxable income of a taxpayer in respect of taxable capital gains from the disposition of qualified fishing property. The amendment to paragraph 110.6(2)(d) is intended to preclude any double counting where qualified small business corporation shares are also qualified fishing property.

This amendment applies to taxation years that end on or after May 2, 2006.

Capital gains deduction – qualified fishing property

ITA

110.6(2.2)

New subsection 110.6(2.2) of the Act is added to provide a deduction in computing the taxable income of an individual (other than a trust) in respect of taxable capital gains from the disposition of "qualified fishing property".

New subsection 110.6(2.2) provides that, where an individual who is resident in Canada throughout a taxation year has a taxable capital gain from a disposition of a qualified fishing property, the individual will be permitted to claim a deduction under section 110.6 in respect of that taxable capital gain in computing his or her taxable income for the year to the extent that he or she has not utilized his or her \$500,000 lifetime capital gains exemption limit.

This amendment generally applies to taxation years that end on or after May 2, 2006.

Maximum capital gains deduction

ITA

110.6(4)

Subsection 110.6(4) of the Act provides an overall lifetime taxable capital gains exemption limit for an individual. The subsection adopts the limit provided for in paragraph 110.6(2)(a). As such, notwithstanding the amounts that may be computed as capital gains deductions under subsections 110.6(2) and (2.1), the individual is limited to an overall lifetime limit of \$250,000 of deductions, in respect of taxable capital gains, as set out in paragraph 110.6(2)(a).

Consequential to the introduction of the capital gains deduction in respect of qualified fishing property in new subsection 110.6(2.2), subsection 110.6(4) is amended to ensure that an individual is limited to a total lifetime limit of \$250,000 of deductions in respect of taxable capital gains derived from qualified farm property, qualified shares of a small business corporation, and qualified fishing property.

This amendment generally applies to taxation years that end on or after May 2, 2006.

Deemed resident in Canada

ITA

110.6(5)

Subsection 110.6(5) of the Act is a relieving provision that provides that, where an individual is resident in Canada at any time in a particular taxation year, the individual is deemed to be resident in Canada throughout that particular year if the individual was resident in Canada throughout either the immediately preceding taxation year or the immediately following taxation year. Subsection 110.6(5) is applicable only for the purposes of subsections 110.6(2), (2.1) and (3) and ensures that subsection 110.6(13) operates as intended to exclude, from the capital gains exemptions, amounts in respect of gains realized while the individual is a non-resident.

Subsection 110.6(5) is amended, consequential to the introduction of “qualified fishing property” in section 110.6, to apply also for the purposes of new subsection 110.6(2.2).

This amendment generally applies to taxation years that end on or after May 2, 2006.

Failure to report capital gain

ITA

110.6(6)

Subsection 110.6(6) of the Act denies a capital gains exemption for certain unreported net taxable capital gains. This subsection applies where an individual has realized a capital gain on a disposition of capital property in a taxation year and knowingly or under circumstances amounting to gross negligence fails to report the disposition in his or her return of income for that taxation year or fails to file a return for that taxation year within one year following the taxpayer’s filing-due date for the taxation year.

Subsection 110.6(6) is amended consequential to the extension of the lifetime capital gains exemption to “qualified fishing property” in section 110.6.

This amendment generally applies to taxation years that end on or after May 2, 2006.

Deduction not permitted

ITA

110.6(7)

Subsection 110.6(7) of the Act is an anti-avoidance rule to prevent the conversion of taxable capital gains of corporations into exempt capital gains of individuals. Any such gains of an individual will be denied the capital gains exemption under subsections 110.6(2) and (2.1).

Subsection 110.6(7) is amended consequential to the extension of the lifetime capital gains exemption to “qualified fishing property” in section 110.6.

This amendment generally applies to taxation years that end on or after May 2, 2006.

Deduction not permitted

ITA

110.6(8)

Subsection 110.6(8) of the Act provides that an individual may not claim the capital gains exemption with respect to a capital gain realized on a disposition of property where it is reasonable to conclude that a significant portion of the capital gain is attributable to the fact that dividend payments on a share (other than a prescribed share) have either not been made or have been deferred.

Subsection 110.6(8) is amended consequential to the extension of the lifetime capital gains exemption to “qualified fishing property” in section 110.6.

This amendment generally applies to taxation years that end on or after May 2, 2006.

Trust deduction

ITA

110.6(12)(b)

Subsection 110.6(12) of the Act generally provides for a deduction, in computing the taxable income of a trust for the benefit of a spouse or common-law partner for the taxation year of the trust in which the spouse or common-law partner dies, of an amount equal to the lesser of the unused lifetime capital gains exemption limit of the deceased and the amount of the taxable gains of the trust determined under that subsection.

Subsection 110.6(12) is amended to permit the trust referred to in that subsection to claim a deduction under section 110.6 in respect of a qualified fishing property disposed of by it on or after May 2, 2006. This amendment is consequential to the extension of the lifetime capital gains exemption to “qualified fishing property” in section 110.6.

This amendment generally applies to taxation years that end on or after May 2, 2006.

Clause 16

Tax rates applicable to individuals

ITA

117(2)

Subsection 117(2) of the Act provides the marginal rates of federal personal income tax.

Paragraphs 117(2)(c) and (d), as enacted by subsection 58(3) of the *Budget Implementation Act, 2006*, chapter 4 of the Statutes of Canada, 2006, are amended to replace the references to the amount \$118,825 with references to the amount \$118,285.

This amendment corrects a typographical error and applies to the 2007 and subsequent taxation years.

Clause 17

Annual adjustment of deductions and other amounts

ITA

117.1(1)

Subsection 117.1(1) of the Act provides for the indexing of various amounts, including the amounts on which the personal tax credits are based. Subsection 117.1(1) is amended to apply to the reference to \$1,000 in the formula in paragraph 8(1)(s) of the Act (the tradesperson tool deduction) and the reference to \$1,000 in paragraph (a) of the description of B in subsection 118(10) of the Act (the Canada employment credit).

This amendment applies to the 2006 and subsequent taxation years.

Clause 18

Pension credit

ITA

118(3)

Subsection 118(3) of the Act provides for a non-refundable pension credit for all individuals who are in receipt of eligible pension income. This credit is calculated by reference to up to \$1,000 of eligible pension income multiplied by the appropriate percentage for the year.

Subsection 118(3) is amended to increase the pension credit to up to \$2,000 of eligible pension income, multiplied by the appropriate percentage for the taxation year. The appropriate percentage is 15.25% for the 2006 taxation year and 15.5% for the 2007 and subsequent taxation years.

This amendment applies to the 2006 and subsequent taxation years.

Canada employment credit

ITA
118(10)

Section 118 of the Act is amended by adding new subsection 118(10) – the new Canada employment credit. New subsection 118(10) provides to an individual a non-refundable tax credit on up to \$1,000 of employment income for a taxation year. The tax credit is calculated by reference to the lesser of \$1,000 (\$250 for the 2006 taxation year) and the individual's income for the taxation year from all offices and employments without taking into account deductions allowed under section 8 of the Act multiplied by the appropriate percentage for that year. The appropriate percentage is 15.25% for the 2006 taxation year and 15.5% for the 2007 and subsequent taxation years.

This amendment applies to the 2006 and subsequent taxation years.

Clause 19

Transit pass tax credit

ITA
118.02

New section 118.02 of the Act provides to an individual a non-refundable tax credit in respect of the cost of eligible public transit passes attributable to the use, by the individual or a qualifying relation in respect of the individual, of public transit in a taxation year. The credit is calculated by reference to that cost multiplied by the appropriate percentage for that taxation year. The appropriate percentage is 15.25% for the 2006 taxation year and 15.5% for the 2007 and subsequent taxation years.

New section 118.02 applies to the 2006 and subsequent taxation years in respect of the use of public transit services after June 2006.

Definitions

ITA
118.02(1)

New subsection 118.02(1) of the Act sets out certain definitions and rules that apply for the purpose of the transit pass tax credit.

“eligible public transit pass”

“Eligible public transit pass” is a document issued by or on behalf of a qualified Canadian transit organization that identifies the right of an individual (the holder or owner of the document) to use public commuter transit services of that organization on an unlimited number of occasions and on any day during which the services are offered during an uninterrupted period of at least 28 days.

“public commuter transit services”

“Public commuter transit services” are services offered to the general public of transporting individuals from a place in Canada to another place in Canada and in respect of which it can reasonably be expected that those individuals would return daily to the place of their departure. Those services have to be offered ordinarily for a period of at least 5 days per week by means of a bus, ferry, subway, train, or tram.

“qualified Canadian transit organization”

“Qualified Canadian transit organization” is a person authorised under a law of Canada or of a province to carry on a business in Canada (through a permanent establishment in Canada) that is the provision of public commuter transit services.

“qualifying relation”

“Qualifying relation” of an individual for a taxation year is a person who is the individual’s spouse or common-law partner at any time in the taxation year and a child of the individual who has not attained the age of 19 years during the taxation year.

Calculation of transit pass tax credit

ITA

118.02(2)

New subsection 118.02(2) of the Act provides for the calculation of the non-refundable transit pass tax credit for a taxation year. The credit is determined by applying the appropriate percentage for the taxation year to the amount by which the cost of eligible public transit passes attributable to public transit for the individual or a qualifying relation exceeds any reimbursements and other forms of assistance that any individual is or was entitled to receive in respect of the cost of eligible public transit pass (other than an amount that is included in computing that individual’s income and that is not deductible in computing that individual’s taxable income). The appropriate percentage is 15.25% for the 2006 taxation year and 15.5% for the 2007 and subsequent taxation years.

Apportionment of credit

ITA

118.02(3)

New subsection 118.02(3) of the Act provides that, where more than one individual is entitled to the transit pass tax credit in respect of an eligible public transit pass, the total amounts claimed by those individuals cannot exceed the maximum amount that would be allowed if only one individual were claiming the transit pass tax credit. If the individuals cannot agree as to what portion of the amount each can so deduct, the Minister of National Revenue may fix the portions.

Clause 20**Textbook tax credit**

ITA

118.6(2.1)

New subsection 118.6(2.1) of the Act provides to an individual a non-refundable tax credit in respect of textbooks for each month in a taxation year in which an individual was entitled to claim the education tax credit.

The textbook tax credit for a taxation year is equal to the product obtained when the appropriate percentage for the taxation year is multiplied by \$65 for each month in the taxation year in which the individual was entitled to claim the education tax credit as a full-time student or \$20 for each month in the taxation year in which the individual was entitled to claim the education tax credit as a part-time student. The appropriate percentage is 15.25% for the 2006 taxation year and 15.5% for the 2007 and subsequent taxation years.

New subsection 118.6(2.1) applies to the 2006 and subsequent taxation years.

Students eligible for the disability tax credit

ITA

118.6(3)

Subsection 118.6(2) of the Act provides for an education tax credit of \$400 for each month in the taxation year in which an individual is enrolled on a full-time basis in a qualifying educational program at a designated educational institution and of \$120 for each month in the taxation year in which an individual is enrolled on a part-time basis in a specified educational program at a designated educational institution.

Subsection 118.6(3) extends full-time student eligibility for the education tax credit to certain part-time students, where the student is eligible for the disability tax credit or cannot be enrolled on a full-time basis because of the student's mental or physical impairment. Subsection 118.6(3) is amended to add a reference to subsection 118.6(2.1), in order that this provision may also apply for the purposes of the new textbook tax credit.

This amendment is consequential to the introduction of the new textbook tax credit in subsection 118.6(2.1) and applies to the 2006 and subsequent taxation years.

ITA

118.6(3)(b)(iii)

Subparagraph 118.6(3)(b)(iii) (subparagraph 118.6(3)(b)(iv) in the French version of the Act) is amended consequential to the amendment to paragraph 118.3(1)(a.2) of the Act which makes a physiotherapist eligible to certify, after February 22, 2005, a severe and prolonged impairment in walking.

This amendment applies to the 2005 and subsequent taxation years in respect of certifications made by a physiotherapist after February 22, 2005.

ITA

118.6(3)(b)(iv)

Subparagraph 118.6(3)(b)(iv) (subparagraph 118.6(3)(b)(v) in the French version of the Act) is amended consequential to the amendment to subparagraph 118.4(1)(c)(i) of the Act and the introduction of new subparagraph 118.4(1)(c.1) which was added, for greater certainty, to define mental functions necessary for everyday life.

This amendment applies to the 2005 and subsequent taxation years.

Clause 21**Unused tuition and education tax credits**

ITA

118.61(1)

Subsection 118.61(1) of the Act provides for the calculation of a student's unused tuition and education tax credits that may be carried forward to future taxation years. This subsection is amended consequential to the introduction of the new textbook tax credit in subsection 118.6(2.1) of the Act. Variable A is amended, also consequential to the introduction of this new tax credit, to ensure a seamless carry-forward of amounts even when the name of the credit changes (i.e. from "the unused tuition and education tax credits" to "the unused tuition, textbook and education tax credits"). Variable C is amended as a consequence of the introduction of section 118.02 of the Act (the new transit pass tax credit).

These amendments apply to the 2006 and subsequent taxation years.

ITA

118.61(2)(a) and (b)

Subsection 118.61(2) of the Act determines the amount of the carry-forward of unused tuition and education tax credits that is deductible for the current year. Paragraph 118.61(2)(a) is amended consequential to the introduction of subsection 118.6(2.1) of the Act (the new textbook tax credit). Paragraph 118.61(2)(b) is amended as a consequence of the introduction of section 118.02 (the new transit pass tax credit) of the Act.

These amendments apply to the 2006 and subsequent taxation years.

ITA

118.61(3)

Subsection 118.61(3) of the Act is a transitional rule that applied on the reduction in 2001 of the lowest personal income tax rate from 17% to 16%. This subsection is repealed, as it no longer has any effect.

Change of appropriate percentage

ITA

118.61(4)

Subsection 118.61(4) of the Act adjusts the unused tuition and education tax credit at the end of the immediately preceding taxation year in circumstances where the “appropriate percentage” applicable in the current taxation year is different from the “appropriate percentage” applicable in the immediately preceding taxation year. Subsection 118.61(4) is amended to add references to subsection 118.6(2.1) of the Act (the new textbook tax credit).

This amendment applies to the 2005 and subsequent taxation years except that, for the 2005 and 2006 taxation years, the references to “the unused tuition, textbook and education tax credits” are to be read as references to “the unused tuition and education tax credits”.

Clause 22

Transfer of unused credits to spouse or common-law partner

ITA

118.8

Section 118.8 of the Act governs the transfer to a spouse or common-law partner of certain unused personal tax credits. The credits that may be transferred are the tuition and education tax credits and the age, pension and disability tax credits. The description of variable A is amended to add a reference to the new textbook credit (subsection 118.6(2.1) of the Act) consequential to the introduction of this new tax credit. Subparagraph (b)(ii) of the description of variable C is amended to add a reference to section 118.01 of the Act (the adoption tax credit) and section 118.02 of the Act (the new transit pass tax credit).

These amendments apply to the 2005 and subsequent taxation years except that, in its applications to the 2005 taxation year, subparagraph (b)(ii) of the description of variable C is to be read without its reference to section 118.02.

Clause 23**Tuition and education tax credits transferred**

ITA
118.81

Section 118.81 of the Act provides for the calculation of the tuition and education tax credits that may be transferred under section 118.8 of the Act to the student's spouse or common-law partner, or under section 118.9 of the Act to a parent or grandparent.

The preamble of this section is amended to add a reference to subsection 118.6(2.1) of the Act (the new textbook credit). The description of variable B in paragraph 118.81(a) is amended to add a reference to sections 118.02 of the Act (the new transit pass tax credit).

These amendments apply to the 2006 and subsequent taxation years.

Clause 24**Transfer to parent or grandparent**

ITA
118.9

Section 118.9 of the Act governs the transfer of a student's tuition and education tax credits to the student's parent or grandparents. Section 118.9 is amended to add a reference to subsection 118.6(2.1) of the Act (the new textbook tax credit).

This amendment applies to the 2006 and subsequent taxation years.

Clause 25**Part-year residents**

ITA
118.91

Section 118.91 of the Act provides rules with respect to non-refundable tax credits allowed to individuals who reside in Canada for only part of a taxation year.

Subparagraph 118.91(b)(i) is amended to add a reference to subsection 118(10) of the Act (the new Canada employment credit) and section 118.02 of the Act (the new transit pass tax credit).

This amendment applies to the 2006 and subsequent taxation years.

Clause 26**Ordering of credits**

ITA
118.92

Section 118.92 of the Act provides that the tax credits allowed in computing an individual's tax payable for a taxation year are to be applied in a specific order.

This section is amended to add a reference to subsection 118(10) of the Act (the new Canada employment credit) and section 118.02 of the Act (the new transit pass tax credit).

This amendment applies to the 2006 and subsequent taxation years.

Credits in separate returns

ITA
118.93

Section 118.93 of the Act provides that, where a separate return of income for an individual is filed under subsection 70(2), 104(23) or 150(4) of the Act for a period and another return under Part I is filed for a period ending in the calendar year in which the period covered in the separate return ends, the combined amounts deducted in respect of the credits in respect of pension income, charitable donations, medical expenses, impairments in mental or physical functions, tuition fees and education, and the transfer of unused credits to a supporting person, cannot exceed the amount that would be deductible under those provisions if no separate return were filed.

This section is amended to add a reference to subsection 118(10) of the Act – the new Canada employment credit.

This amendment applies to the 2006 and subsequent taxation years.

Tax payable by non-resident

ITA
118.94

Section 118.94 of the Act provides rules with respect to non-refundable tax credits allowed to individuals who did not reside in Canada at any time in a taxation year. Subject to the special rule in section 217 of the Act, such individuals are allowed to claim certain non-refundable credits for a taxation year only where all or substantially all (90%) of their income for the taxation year is included in computing their taxable income earned in Canada.

This section is amended to add a reference to section 118.02 (the new transit pass tax credit) of the Act and to subsection 118.6(2.1) of the Act (the new textbook credit).

This amendment applies to the 2006 and subsequent taxation years.

Clause 27

Credits in year of bankruptcy

ITA
118.95

When an individual becomes bankrupt, subsection 128(2) of the Act divides the calendar year in which the bankruptcy occurs into two taxation years: one that runs from January 1 to the day before the bankruptcy; and a second that begins on the day of the bankruptcy and runs to December 31. Section 118.95 of the Act ensures that non-refundable tax credits that are based on expenditures or on the receipt of certain types of income are determined by reference to the amounts that relate to the relevant taxation year. In all cases, the total of the amounts claimed in respect of each of the credits for the two taxation years cannot be greater than the amount that could be claimed in respect of the calendar year as a whole.

The amendment to paragraph 118.95(a) adds a reference to subsection 118(10) of the Act (the new Canada employment credit) and section 118.02 of the Act (the new transit pass tax credit).

This amendment applies to the 2006 and subsequent taxation years.

Clause 28

Refundable medical expense supplement

ITA
122.51

Section 122.51 of the Act provides a refundable medical expense supplement equal to the lesser of \$1,000 (indexed after 2006) and 25% of the total of allowable expenses claimed under the disability supports deduction and the medical expense tax credit by an eligible individual for the year. The supplement is reduced by 5% of “adjusted income” in excess of an indexed threshold.

The 25% factor is set out in subparagraph (b)(i) of the description of A in subsection 122.51(2), as a function of certain amounts creditable at 16%, the “appropriate percentage” before 2006. This factor is amended to achieve the 25% factor by reference instead to a defined term, the “appropriate percentage”, used in computing the individual’s non-refundable personal tax credits for the taxation year. The appropriate percentage is 15.25% for the 2006 taxation year and 15.5% for the 2007 and subsequent taxation years.

This amendment applies to the 2006 and subsequent taxation years.

Clause 29

Full rate taxable income

ITA
123.4(1)

Corporations are generally subject to tax under Part I of the Act at a rate of 38% (as specified in subsection 123(1) of the Act), less 10% of any taxable income earned in the year in a province (as specified in subsection 124(1) of the Act and generally called the “provincial abatement”). The resulting 28% is further reduced by the general rate reduction under subsection 123.4(2) of the Act, and the definition “full rate taxable income” is relevant in determining the amount of a corporation’s general rate reduction.

A corporation’s “full rate taxable income” for a taxation year is defined in subsection 123.4(1), and, in general terms, is that part of the corporation’s taxable income for the year that has not benefited from any of the various special tax rates provided under the Act. This amount is determined differently depending on the status of the corporation. Paragraph (a) of the definition applies to corporations other than Canadian-controlled private corporations (CCPCs) and various “specialty corporations” such as investment corporations and mutual fund corporations. Paragraph (b) applies to CCPCs. Investment corporations, mortgage investment corporations, mutual fund corporations and non-resident-owned investment corporations are dealt with in paragraph (c); their full rate taxable income is nil.

Paragraph (a) of the definition is amended to ensure that, if an amount of taxable income of a corporation is not subject to tax under subsection 123(1), that amount does not benefit from the general rate reduction in subsection 123.4(2).

This amendment to paragraph (a) of the definition applies to taxation years that begin on or after May 2, 2006.

Paragraph (a) of the definition is also amended consequential to the amendments that increase to 17% from 16% the tax credit for credit unions provided under subsection 137(3) of the Act (see commentary on that subsection). Subparagraph (a)(iv) of the definition currently excludes from full rate taxable income 100/16 of any amount deducted in respect of subsection 137(3). This subparagraph is amended to refer specifically to taxable income that benefits from this tax credit, rather than to, as it currently does, a fraction of the amount deducted in respect of subsection 137(3).

Amended subparagraph (a)(iv) of the definition applies to the 2008 and subsequent taxation years.

Paragraph (b) of the definition is amended consequential to the amendments that increase to 17% from 16% the small business deduction rate in section 125 of the Act (see commentary on subsections 125(1) and (1.1)). Subparagraph (b)(ii) of the definition currently excludes from full rate taxable income 100/16 of any amount deducted under subsection 125(1). This subparagraph is amended to refer specifically to taxable income that benefits from the small business deduction, rather than to a fraction of the amount deducted under subsection 125(1).

Amended subparagraph (b)(ii) of the definition applies to the 2008 and subsequent taxation years.

Clause 30

Small business deduction

ITA
125

Section 125 of the Act contains rules concerning the small business deduction that may be claimed by a Canadian-controlled private corporation in respect of its income from carrying on an active business in Canada.

ITA
125(1)

The small business deduction available to Canadian-controlled private corporations is provided for under subsection 125(1) of the Act by way of an annual tax credit not exceeding 16% of the least of certain amounts, one of which is the “business limit” (currently \$300,000; see the commentary on subsections 125(2) and (3)).

Subsection 125(1) is amended by replacing the reference to a specific rate with a new term: “small business deduction rate” (as defined in new subsection 125(1.1)). As a result, a corporation’s small business deduction for a taxation year will be the amount equal to the corporation’s small business deduction rate for the year multiplied by the least of the amounts described in existing paragraphs 125(1)(a) to (c).

Amended subsection 125(1) applies to the 2008 and subsequent taxation years.

ITA
125(1.1)

For the purpose of computing the small business deduction under subsection 125(1) of the Act, a corporation’s small business deduction rate for a taxation year is determined under new subsection 125(1.1). Under this provision, the current small business deduction rate of 16% (specified in existing subsection 125(1)) is increased over two taxation years to 17%: a half per cent increase for the 2008 taxation year; and another half per cent increase for the 2009 and subsequent taxation years. The small business deduction rate will be prorated for taxation years that overlap calendar years with different rates.

New subsection 125(1.1) applies to the 2008 and subsequent taxation years.

ITA
125(2) and (3)

The “business limit” of a Canadian-controlled private corporation (CCPC) is relevant in determining the CCPC’s small business deduction under subsection 125(1) of the Act. A corporation’s “business limit” for a taxation year is determined under subsection 125(2), in the case of a corporation that is not associated with any CCPCs in the year, or under subsection 125(3), in the case of a corporation that is associated with one or more Canadian-controlled private corporations in the year. Currently, \$300,000 is the maximum “business limit” under these provisions.

Subsections 125(2) and (3) are amended by increasing the “business limit” to \$400,000, effective for the 2007 and subsequent taxation years, except that the “business limit” will be prorated for 2007 and 2008 taxation years that begin before 2007.

ITA
125(7)

“specified partnership income”

Subsection 125(7) of the Act provides definitions for the terms used in section 125, relating to the “small business deduction” for Canadian-controlled private corporations (CCPCs). The “specified partnership income” of a corporation is defined in this provision by reference to a formula and is used in determining the small business deduction of a CCPC that carries on an active business through a specified partnership.

Consequential to the increase to \$400,000 from \$300,000 of the “business limit” (see commentary on subsection 125(2) and (3)), the description of M in the formula in the definition is amended by replacing the reference to “\$300,000” with a reference to “\$400,000” and the reference to “\$822” with a reference to “\$1,096”.

These amendments to the definition apply to partnership fiscal periods that end after 2006.

Clause 31

Deductions from tax payable

ITA
127

Section 127 of the Act permits deductions in computing taxable income in respect of logging, political contributions and investment tax credits.

Investment tax credit

ITA
127(5)

Subsection 127(5) of the Act provides for the deduction of investment tax credits (ITCs) from a taxpayer’s Part I tax otherwise payable.

Subsection 127(5) is amended consequential to the introduction of the Apprenticeship Job Creation Tax Credit, which is earned in respect of eligible salary and wages payable to an eligible apprentice by a taxpayer that carries on business in Canada. For further information, see the commentary below accompanying subsections 127(8.1) to (8.31) and the new definitions “apprenticeship expenditure”, “eligible apprentice” and “eligible salary and wages”, and new paragraph (a.4) to the definition “investment tax credit”, in subsection 127(9).

This amendment applies to taxation years that end on or after May 2, 2006.

Investment tax credit of testamentary trust

ITA
127(7)

Subsection 127(7) of the Act permits a testamentary trust and a communal organization treated as an *inter vivos* trust under section 143 of the Act to allocate its investment tax credits (ITCs) to its beneficiaries.

Subsection 127(7) is amended to add a reference to new paragraph (a.4) of the definition “investment tax credit” in subsection 127(9) consequential to the new Apprenticeship Job Creation Tax Credit.

This amendment applies to taxation years that end on or after May 2, 2006.

Investment tax credit of partnership

ITA
127(8)

Subsection 127(8) of the Act provides for the allocation of the investment tax credits (ITCs) earned by a partnership to its partners.

In general terms, subsection 127(8) allocates a portion of a partnership's ITCs to each partner based on what can reasonably be considered to be the particular partner's share of the ITCs.

Subsection 127(8) also provides that SR&ED ITCs cannot be allocated to a partner of a partnership that is at any time in the taxation year (fiscal period) of the partnership to which the credit relates to a "specified member" of the partnership. Generally, a specified member is a partner who is a limited partner or a passive general partner (see the definition "specified member" in subsection 248(1) of the Act).

Subsection 127(8) is amended to provide for an allocation of a partnership's apprenticeship expenditure ITCs (i.e., in respect of eligible salary and wages payable to an eligible apprentice by the partnership). For further information, see the commentary below accompanying subsections 127(8.1) to (8.31) and subsection 127(9).

This amendment applies to taxation years that end on or after May 2, 2006.

Investment tax credit of limited partner

ITA
127(8.1)

Subsection 127(8.1) of the Act restricts the amount of investment tax credits (ITCs) that may be allocated by a partnership to a limited partner. In general terms, a limited partner can be allocated the limited partner's share of non-SR&ED ITCs only to the extent the allocation is not constrained by the limited partner's expenditure base and at-risk amount in respect of the partnership.

Subsection 127(8.1) is amended to extend its application to apprenticeship expenditure ITCs (i.e., in respect of eligible salary and wages payable to an eligible apprentice by the partnership). For further information, see the commentary below accompanying subsections 127(8.2) to (8.31) and subsection 127(9).

This amendment applies to taxation years that end on or after May 2, 2006.

Investment tax credit – expenditure base

ITA
127(8.2)(b)

Subsection 127(8.2) of the Act defines, for the purpose of the rules in subsection 127(8.1), a limited partner's expenditure base for a taxation year of a partnership (its fiscal period).

Paragraph 127(8.2)(b) ensures that in no event can a limited partner's expenditure base exceed his or her proportionate share of the aggregate expenditure base of all limited partner's of the partnership.

Paragraph 127(8.2)(b) is amended – consequential to the introduction of the apprenticeship expenditure ITC – to ensure that apprenticeship expenditures incurred by a partnership in a taxation year (its fiscal period) are taken into account in determining a limited partner's expenditure base.

This amendment applies to taxation years that end on or after May 2, 2006.

Investment tax credit – allocation of unallocated partnership ITCs

ITA

127(8.3) and (8.31)

Subsection 127(8.3) of the Act provides rules for allocating to certain partners a portion of any partnership investment tax credits (ITCs) that remain after the allocations provided for under subsections 127(8) and (8.1). In general, ITCs that could remain for allocation after the application of those subsections would be SR&ED ITCs (which cannot be allocated to a specified member of the partnership) and other ITCs that cannot be allocated to a limited partner because they would exceed the lesser of the limited partner's expenditure base and at-risk amount.

Subsection 127(8.3) is amended to provide for an allocation of apprenticeship expenditure ITCs that cannot be allocated to a limited partner of the partnership because of subsection 127(8.1). In addition, subsection 127(8.3) is reworded and separated into two subsections.

New subsection 127(8.3) provides for the allocation of a portion of the unallocated partnership ITCs to members of the partnership who are not specified members of the partnership. The amount available for such an allocation is determined under new subsection 127(8.31).

The amount determined under new subsection 127(8.31) is the amount, if any, by which

- the partnership's total ITCs for its fiscal period exceeds the total of
 - the partnership ITCs allocated to general partners who are not specified members,
 - the amount of non-SR&ED ITCs allocated to specified members of the partnership. This amount does not include SR&ED ITCs because such amounts cannot be allocated to specified members. In addition, this amount does not include other ITCs (e.g., apprenticeship expenditure ITCs) that cannot be allocated to limited partners because of the constraint in subsection 127(8.1), and
 - the amount, if any, by which
 - (in general terms) the partnership's ITCs that would have been allocated to specified members of the partnership if they could have been allocated SR&ED ITCs and other ITCs under subsection (8), were they not constrained by subsection (8.1) in respect of allocations to limited partners,
- exceeds
- that amount of partnership ITCs that are actually allocated to specified members.

Essentially, partnership ITCs that cannot be allocated to specified members of a partnership may be added – for the purpose of subsection 127(8) – to the investment tax credits allocated to members of the partnership and who were not specified members of the partnership at any time in its fiscal period. This additional allocation under subsection 127(8) is to be based on what is reasonable in the circumstances (having regard to the investment in the partnership, including debt obligations of the partnership, of each such member of the partnership).

The following provides an example.

Example

Facts:

- Three individuals are partners, one of whom is an active general partner, one of whom is a specified member who is not a limited partner, and one of whom is a specified member who is a limited partner.
- The partnership agreement provides that the members share in the profits (losses) in proportion to their capital contributions.
- Each partner contributes \$30,000 to the partnership, which also borrows \$20,000. Thus, the partnership has \$110,000 available to it. The partnership pays:
 - \$20,000 of eligible salary and wages to an eligible apprentice in its fiscal period such that it earns a \$2,000 Apprenticeship Job Creation Tax Credit under the new regime for such credits in section 127;
 - \$30,000 on qualified SR&ED expenditures that are eligible for a 20% SR&ED ITC under section 127; and
 - \$60,000 on property that is “qualified property” for the purposes of the 10% Atlantic Canada ITC in section 127.
- The partnership therefore earns \$2,000 of apprenticeship expenditure ITCs, \$6,000 of SR&ED ITCs and \$6,000 of Atlantic Canada ITCs. The total ITCs are \$14,000.
- The limited partner’s at-risk amount is Nil (which is less than the partner’s expenditure base as determined in subsection 127(8.2)).

Application of Subsection 127(8) to 127(8.1)

Based on their respective contributions and the partnership agreement, each partner would be allocated 1/3 of the \$14,000 of partnership ITCs.

However, subsection 127(8) precludes an allocation of any portion of the \$6,000 of SR&ED ITCs if it is to a specified member of the partnership – in this example, there are two such members (i.e., the passive general partner and the limited partner).

Allocation of ITCs:	SR&ED	Apprenticeship	ACITC
Active General Partner:	\$2,000	\$667 (rounded)	\$2,000
Specified Member (G):	Nil/\$2,000*	\$667	\$2,000
Specified Member (LP):	Nil/\$2,000*	Nil/\$667*	Nil/\$2,000*

* In addition, however, subsection 127(8.1) reduces a limited partner’s ITCs to that partner’s at-risk amount, which is Nil.

Consequently, \$6,667 of partnership ITCs are unallocated to partners: \$4,000 of SR&ED ITCs: \$667 of apprenticeship expenditure ITCs and \$2,000 of Atlantic Canada ITCs.

However, subsections 127(8.3) and (8.31) can apply to allocate the unallocated ITCs to members of the partnership who are not specified members.

Application of subsections 127(8.3) and (8.31)

Subsection 127(8.3) allows non-specified partners of the partnership to add – for the purposes of subsection 127(8) – an additional amount in respect of the unallocated partnership ITCs to their respective ITCs as determined under subsection 127(8). The additional amount is the portion – based on what is reasonable in the circumstances having regard to each such non-specified member’s investment in the partnership including debts of the partnership – of the amount of unallocated ITCs as determined under subsection 127(8.31).

In this example, there is only one non-specified member of the partnership. Thus, the sole non-specified member of the partnership may be allocated 100% of the unallocated ITCs.

If allocated, the non-specified member of the partnership can add the following amounts to that member’s ITC determined under subsection 127(8) in computing that member’s ITCs at the end of that member’s taxation year:

Allocation of ITCs:	SR&ED	Apprenticeship	ACITC
Non-specified member:			
Subsection 127(8)	\$2,000	\$667 (rounded)	\$2,000
Add:			
Subsection 127(8)/127(8.3)	\$4,000	\$667 (rounded)	\$2,000
	\$6,000	\$1,334	\$4,000

Note: subsection 127(8.4) provides that the partner who is entitled to an additional ITC because of subsection 127(8.3) may elect not to so add the amount to his or her ITCs, in which case the amount is not so allocated by the partnership.

The amendment to allow for the allocation of unallocated apprenticeship expenditure ITCs applies to taxation years that end on or after May 2, 2006 except that the rewording and separation of current subsection 127(8.3) into new subsections (8.3) and (8.31) does not apply to taxation years that end before 2007.

Definitions

ITA
127(9)

Subsection 127(9) of the Act provides for various definitions used in the provisions relating to investment tax credits (ITCs). For example, ITCs are available for most current and capital expenditures made on scientific research and experimental development (SR&ED) in Canada, and for the cost of “qualified property” under the Atlantic Canada ITC program.

Subsection 127(9) is amended in two respects.

First, the definition “investment tax credit” in subsection 127(9) is amended to add new paragraph (a.4) which refers to apprenticeship expenditures of a taxpayer for the taxation year in respect of an eligible apprentice.

Second, subsection 127(9) is amended to add in alphabetical order the following definitions that are related to the new ITC that is being extended to apprenticeship expenditures:

“apprenticeship expenditure”

“Apprenticeship expenditure” of a taxpayer for a taxation year in respect of an eligible apprentice is the lesser of:

- \$2,000, and
- 10% of the eligible salary and wages payable by the taxpayer to an eligible apprentice in respect of the eligible apprentice’s employment, in the taxation year and on or after May 2, 2006, by the taxpayer in a business carried on in Canada by the taxpayer in the taxation year.

“eligible apprentice”

“Eligible apprentice” means an individual who is employed in a prescribed trade in Canada during the first two years of the individual’s apprenticeship contract, which contract is registered with Canada or a province or territory of Canada under an apprenticeship program designed to certify or license individuals in the trade.

“eligible salary and wages”

“Eligible salary and wages” of a taxpayer to an eligible apprentice means the amount, if any, that is the salary and wages payable by the taxpayer to the eligible apprentice in respect of the first 24 months of the apprenticeship (other than remuneration that is based on profits, bonuses, and amounts described in section 6 or 7 of the Act, and amounts deemed to be incurred by subsection 78(4) of the Act). Also see new subsection 127(11.4) of the Act for a special rule that can apply if more than one related employer in the same calendar year employs the eligible apprentice.

These amendments apply to taxation years that end on or after May 2, 2006.

Expenditure limit

ITA
127(10.2)

Subsection 127(10.1) of the Act allows a certain portion of a Canadian-controlled private corporation’s (CCPC’s) scientific research and experimental development (SR&ED) expenditures in a taxation year to be added in computing the CCPC’s investment tax credit at the end of the year. The amount added is limited by reference to the CCPC’s “expenditure limit” for the year, as determined under subsection 127(10.2).

The expenditure limit of a corporation for a particular taxation year is an amount from nil to \$2 million, determined by a formula. The formula includes two variables: the taxable income of the corporation and its associated corporations, if any, for the preceding taxation year; and the total of the section 125 of the Act “business limits”, for the particular year, of the corporation and any associated corporations. The effects of these variables are that a corporation’s \$2 million maximum expenditure limit decreases by \$10 for each dollar of taxable income over \$300,000 in the preceding taxation year, and that the resulting figure is further reduced in proportion to any reduction of the total “business limit” of the associated group.

The \$300,000 threshold for reducing the expenditure limit is, in concept, linked to the maximum “business limit” under section 125, and subsection 127(10.2) is amended to reflect the increase in that limit to \$400,000 from \$300,000. As amended, the expenditure limit of a corporation for a taxation year will not decrease unless the corporation (together with associated corporations) has earned more than \$400,000 of taxable income in the previous taxation year. The formula is also amended so that the expenditure limit continues to be reduced for CCPCs that have “business limits” less than the maximum under section 125.

More specifically, the formula in subsection 127(10.2) is currently $(\$5,000,000 - 10A) \times B/C$. Under the existing formula, A is the greater of \$300,000 (the existing maximum “business limit”) and the corporation’s taxable income for the previous taxation year, or if the corporation is associated with other corporations, the total of the taxable incomes of each member of the group for its last taxation year that ended in the previous calendar year. B is the “business limit” of the corporation, or total “business limits” for the associated group, for the current

taxation year. C is the corporation's maximum "business limit" for the year, calculated without applying subsection 125(5) (short taxation years) and (5.1) (reduction because of taxable capital in excess of \$10 million), or the total of these amounts for a group of associated corporations.

Except in certain transitional cases described below, for the 2007 and subsequent taxation years the amended formula is $(\$6,000,000 - 10A) \times B/C$. A now represents the greater of \$400,000 and the previous taxation year's taxable income amount. B and C are unchanged.

As noted above, amended subsection 127(10.2) generally applies to the 2007 and subsequent taxation years. However, if a 2007 or 2008 taxation year immediately follows a taxation year that ended before 2007, the formula's reference to "\$6 million" is to be read as a reference to "\$5 million", and the reference in the description of A to "\$400,000" is to be read as a reference to "\$300,000". This ensures that the expenditure limit is maintained at an appropriate level in those cases where the increased maximum "business limit" was not in place for the previous taxation year.

Investment tax credit

ITA

127(11.1)

Subsection 127(11.1) of the Act sets out various rules for determining amounts to be included in the investment tax credit calculation in subsection 127(9). The rules provide for a reduction of capital cost and qualified expenditures by certain amounts that qualify as assistance or contract payments.

Subsection 127(11.1) is amended to add new paragraph (c.4). Paragraph (c.4) provides that the amount of a taxpayer's apprenticeship expenditure for a taxation year is deemed to be the amount of the taxpayer's apprenticeship expenditure for the year otherwise determined less the amount of any government assistance or non-government assistance in respect of the expenditure for the year that, at the time of the filing of the taxpayer's return of income for the year, the taxpayer has received, is entitled to receive or can reasonably be expected to receive.

This amendment applies to taxation years that end on or after May 2, 2006.

Special rule for eligible salary and wages

ITA

127(11.4)

New subsection 127(11.4) of the Act provides a special rule that may apply for the purpose of the definition "eligible salary and wages" in subsection (9). Under this rule, a taxpayer's eligible salary and wages in respect of an eligible apprentice is considered to be nil if the apprentice is employed in a calendar year that includes the end of the taxpayer's taxation year by any other taxpayer who is related to the taxpayer (including a partnership that has a member that is related to the taxpayer). However, this is not the case if the taxpayer is designated in prescribed form by all of those related taxpayers to be the only employer of the eligible apprentice for the purpose of applying that definition to the salary and wages payable by the taxpayer to the eligible apprentice in the taxation year. In such circumstances, the designated taxpayer is the only taxpayer in the related group that may earn an apprenticeship expenditure ITC in respect of the apprentice.

This amendment applies to taxation years that end on or after May 2, 2006.

Clause 32

Basic minimum tax credit determined

ITA

127.531

Section 127.531 of the Act permits an individual to claim a deduction in computing minimum tax for most non-refundable personal tax credits.

Paragraph 127.531(a) is amended to add a reference to subsection 118(10) of the Act (the new Canada employment credit) and subsection 118.02(2) of the Act (the new transit pass tax credit).

This amendment applies to the 2006 and subsequent taxation years.

Clause 33

Where individual bankrupt

ITA

128(2)(e)

Subsection 128(2) of the Act contains a number of special rules that apply in cases of personal bankruptcy.

Paragraph 128(2)(e) requires a trustee in bankruptcy to file, for each taxation year in the calendar year in which an individual becomes bankrupt, an income tax return with respect to certain income of the estate and businesses of the individual. For this purpose, the individual's income is to be determined as if no deductions other than those specifically listed were available to the individual.

Paragraph 128(2)(e) is amended to add a reference to section 118.02 of the Act (the new transit pass tax credit).

This amendment applies to the 2006 and subsequent taxation years.

Clause 34

Credit unions

ITA

137(3)

Subsection 137(3) of the Act provides a special tax credit to enable credit unions to accumulate a reserve in respect of their members' deposits and share contributions. The tax credit is 16% of the amount, if any, described in subsection 137(3).

Consequential to the increase of the small business deduction rate to 17% from 16% (see commentary on section 125 of the Act), subsection 137(3) is amended by replacing the reference to a specific rate with a reference to the small business deduction rate defined in new subsection 125(1.1) (see commentary on that subsection). In effect, this amendment phases in over two taxation years (in tandem with the increase to the small business deduction rate) an increase to 17% of the tax credit provided under subsection 137(3).

Amended subsection 137(3) applies to the 2008 and subsequent taxation years.

Clause 35**Deposit insurance corporations**

ITA

137.1(9)

Subsection 137.1(9) of the Act provides a special tax rate for deposit insurance corporations (DICs) other than those deemed by subsection 137.1(5.1) of the Act to be DICs and those incorporated under the *Canada Deposit Insurance Corporation Act*. The tax payable under Part I of the Act by a DIC for a taxation year is 22% of its taxable income for the taxation year.

Consequential amendments are made to subsection 137.1(9) as a result of the increase of the small business deduction rate to 17% from 16% (see commentary on section 125 of the Act). The tax payable by DICs under amended subsection 137.1(9) is expressed by reference to a formula, which effectively phases in over two taxation years (in tandem with the increase to the small business deduction rate) a decrease, to 21%, of the tax rate applicable under subsection 137.1(9).

Amended subsection 137.1(9) applies to the 2008 and subsequent taxation years.

Clause 36 to 38**Minimum tax on financial institutions**

ITA

Part VI

Part VI of the Act contains the rules concerning the minimum tax on financial institutions, which is a tax on the amount by which a financial institution's taxable capital employed in Canada exceeds a certain threshold (called the capital deduction). Under the existing rules, the tax is effectively levied at a rate of 1.0% on taxable capital employed in Canada between \$200 million and \$300 million, and at a rate of 1.25% on taxable capital employed in Canada in excess of \$300 million. The tax under Part VI is considered a minimum tax because the tax is, broadly speaking, reduced to the extent that the financial institution pays tax under Part I of the Act.

Amendments to Part VI increase the capital deduction to \$1 billion from \$200 million and introduce a single tax rate of 1.25% on taxable capital employed in Canada above that capital deduction, effective for taxation years that end on or after July 1, 2006. Special transitional rules apply for taxation years that straddle July 1, 2006 (see commentary to section 190.16 below).

Unused part I tax credits – transitional rule

ITA

190.1

Part VI of the Act contains the rules concerning the minimum tax on financial institutions, and section 190.1 of the Act establishes the rate of tax payable by a financial institution under Part VI. Subsections 190(1.1) and (1.2) relate to additional taxes under Part VI that are no longer imposed. Those subsections are repealed for taxation years that end on or after July 1, 2006.

Paragraph 190.1(3)(b) permits a financial institution to reduce its Part VI tax liability for a taxation year by the amount of any unused Part I tax credits for the seven preceding and three following taxation years. "Unused Part I tax credit" is defined in subsection 190.1(5) as generally the amount by which a financial institution's Part I tax payable for a taxation year exceeds its Part VI tax liability for the taxation year (before taking into account the deductions available under subsection 190.1(3)). The portion of subsection 190.1(3) after paragraph (b) relates to a pre-1992 system for offsetting these taxes; that portion is repealed for taxation years that end on or after July 1, 2006.

Subsection 190.1(4) sets out certain rules for the purposes of subsections 190.1(3), (5) and (6), including paragraph 190.1(3)(b). Subsection 190.1(4) is amended by adding a transitional rule – new paragraph (c), which restricts the ability of financial institutions to carry back unused Part I tax credits under paragraph 190.1(3)(b). Under new paragraph 190.1(4)(c), unused Part I tax credits of a corporation for taxation years ending on or after July 1, 2006 that are carried back under paragraph 190.1(3)(b) to taxation years ending before that time are computed as if the Part VI tax were still levied at a rate of 1.0% on taxable capital employed in Canada between \$200 million and \$300 million, and at a rate of 1.25% on taxable capital employed in Canada in excess of \$300 million.

Capital deduction

ITA

190.15(1) to (3)

Part VI of the Act contains the rules concerning the minimum tax on financial institutions, which is a tax on the amount by which a financial institution's taxable capital employed in Canada exceeds a certain threshold (called the capital deduction).

Subsections 190.15(1) to (3) of the Act set out the rules for determining the capital deduction of a financial institution for a taxation year. Under the existing rules, the maximum capital deduction of a financial institution for a taxation year is the total of \$200 million and an additional amount equal to the lesser of \$20 million and 20% of the amount, if any, by which its taxable capital employed in Canada exceeds \$200 million. This additional amount effectively reduces the Part VI tax rate of 1.25% (specified in subsection 190.1(1) of the Act) to 1.0% for taxable capital employed in Canada between \$200 million and \$300 million. (Taxable capital employed in Canada in excess of \$300 million is subject to the 1.25% tax rate).

These subsections are amended by increasing the capital deduction to \$1 billion, and by repealing the additional amount. In this way, there will be a single capital deduction of \$1 billion under Part VI, and taxable capital employed in Canada exceeding that threshold will be subject to the Part VI tax rate of 1.25%.

These amendments apply to taxation years that end on or after July 1, 2006. Special transitional rules apply for taxation years that straddle July 1, 2006 (see commentary to section 190.16 below).

Transitional provisions

ITA

190.16

Amendments to the Part VI minimum tax on financial institutions increase the Part VI capital deduction to \$1 billion from \$200 million and introduce a single Part VI tax rate of 1.25% on taxable capital employed in Canada above that capital deduction, effective for taxation years that end on or after July 1, 2006 (see commentary on subsections 190.15(1) to (3)).

Transitional provisions are introduced for taxation years that begin before and end on or after July 1, 2006 (in this note called a "straddle year"). New subsection 190.16(1) of the Act prorates for a straddle year the tax payable by a financial institution under Part VI. For this purpose, new subsection 190.16(2) ensures that, if the financial institution is related to another financial institution at the end of the straddle year, a single allocation of the capital deduction under subsection 190.15(2) or (3) of the Act is used in computing the Part VI tax payable of the financial institution under new subsection 190.16(1).

New subsection 190.16(3) sets out a transitional rule for the purposes of applying subsection 190.15(5) to a financial institution for a straddle year. Subsection 190.15(5) provides rules for determining the capital deduction of a particular financial institution which has more than one taxation year ending in the same calendar year and is related in two or more of those taxation years to another financial institution that also has a taxation year ending in that calendar year. Where this occurs, the capital deduction of the particular financial institution for each taxation year at the end of which it is related to the other financial institution is equal to the amount allocated to it, under subsections 190.15(2) or (3), as its capital deduction for the first taxation year in that calendar year in which it is related to the other financial institution.

Where the “first such taxation year” described in subsection 190.15(5) is a straddle year, the capital deduction of the financial institution for that “first such taxation year” is prorated under new subsection 190.16(3). More specifically, the capital deduction of the financial institution for the straddle year is the total of: that proportion of the capital deduction allocated to the financial institution under subsection 190.16(1) that the number of days in the straddle year that precede July 1, 2006 is of the number of days in the straddle year; and that proportion of the capital deduction allocated to the financial institution under subsection 190.16(1) that the number of days in the straddle year that are on or after July 1, 2006 is of the number of days in the straddle year.

These transitional provisions apply to taxation years that end on or after July 1, 2006.

